



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13293/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard Cardiff Civil Justice Centre**

**Decision**

**&**

**Reasons**

**On 20 September 2018**

**Promulgated**

**On 01 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**M N A**

**(ANONYMITY DIRECTION MADE)**

Claimant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Secretary of State

**Representation:**

For the Claimant: Ms Pollard, Counsel

For the Secretary of State: Mr Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. In this appeal I refer to the Appellant before the First-tier Tribunal as the Claimant and the Respondent before the First-tier Tribunal as the Secretary of State. The Claimant is a national of Iraq. The Secretary of State refused his application for asylum and humanitarian protection in a decision letter dated 1 December 2017. The Secretary of State also decided that he failed to meet the requirements of the Immigration Rules for leave to remain on the basis of his family life or private life in the United Kingdom.

2. The Claimant appealed the Secretary of State's decision and his appeal came before First-tier Tribunal Judge B Lloyd, who in a Decision and Reasons promulgated on 21 February 2018 dismissed his appeal on asylum grounds and allowed his appeal on humanitarian protection grounds and Articles 2 and 3 ECHR.
3. The Secretary of State then sought permission to appeal against the decision of Judge Lloyd and permission was granted by First-tier Tribunal Judge Froom who concluded that it was arguable that the decision lacked adequate reasoning as to why, having found the Claimant had fabricated a claim to be at risk of honour killing, the First-tier Tribunal Judge nonetheless accepted his claim to have lost touch with his family. Any such error was material to the question of whether the Claimant could obtain a CSID and access support on return to Iraq.
4. The Claimant was also granted permission to appeal on a cross-appeal by C M G Ockelton, Vice President of the Upper Tribunal, on the point made in his grounds that the First-tier Tribunal made a perverse finding that his hometown was seemingly agreed as a "non-contested" area. It is argued in the grounds that the Secretary of State had contended that the Claimant's home area was non-contested and most of the submissions at the hearing centred on the Claimant's case that it was contested.

### **The Grounds for the Secretary of State**

5. In brief, the grounds allege that the First-tier Tribunal, in allowing the appeal on humanitarian protection grounds, failed to provide adequate reasons why the Claimant had discharged the burden of proof in the light of the case law. The Tribunal's findings that the Claimant was unlikely to be able to obtain a CSID due to lack of support or any family, it is argued, are inadequately reasoned in the light of the fact that the First-tier Tribunal found that the Claimant had fabricated his account. Further, it is argued that the First-tier Tribunal ignored the cogent evidence that the security situation in Iraq had improved and that indiscriminate violence against citizens did not meet the Article 15 (c) threshold. It is argued that the First-tier Tribunal's findings were contradictory and the finding that internal flight was not feasible on the basis that he had no family or sponsor, did not have the relevant paperwork or CSID or could not return to Baghdad or the IKR as this would be unduly harsh, was at odds with the background evidence. It is said that the First-tier Tribunal did not adequately explain why the Claimant could not get CSID on the objective evidence alone. It is argued that the First-tier Tribunal had failed to consider that the Claimant could reasonably attend the Iraq embassy in the UK and attempt to obtain a CSID or alternatively at the CSA or national court in Baghdad. In conclusion, it is submitted that as the Claimant had been found not to be credible, there was no reason why he could not return to Iraq as he did not fall within any particular group at risk of harm under the Refugee Convention nor had he discharged his burden of proof in respect of this humanitarian protection claim.

### **The Grounds for the Claimant**

6. The Claimant argues that the Judge erred in accepting that the Claimant's home was not a contested area in the absence of any finding to this effect because this was a matter in issue between the parties. The Secretary of State accepted in the refusal letter that the Claimant's home town was within Kirkuk, a contested area, and had argued in the refusal letter that the country guidance in respect of Kirkuk being a contested area should be departed from. The Judge clearly was unaware that this was a matter in issue between the parties.

## **The Hearing**

7. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Lloyd and if so whether to set that decision aside.
8. I heard submissions from both representatives. Mr Howells amplified on the grounds seeking permission to appeal. He submitted that the Secretary of State was entitled to know why the Judge completely disbelieved the Claimant's account and found that it had been fabricated and yet gave no reasons why he accepted that the Claimant was no longer in contact with his family. In circumstances where the Judge made adverse findings in relation to the claim that he was at risk of an honour killing and found that the Claimant had tried to mislead the Secretary of State and the Tribunal by fabricating his case it was all the more important that reasons should have been given for accepting his claim to have lost contact with his family. Arguably the findings were irrational because no reliance could be placed on the Claimant's claim that he had lost contact with his family. The Judge should have been mindful that an Iraqi who made a fabricated asylum claim might also find it convenient to fabricate his claim in relation to his contact with his relatives. The error was material because it related to his returnability and also because infected his findings in subsequent paragraphs namely 53, 54, 56 and 59. The Judge did not consider the steps he had taken obtain a CSID and therefore his conclusion at paragraph 52 was flawed. He did not consider that a power of attorney could be provided to obtain a CSID.
9. Miss Pollard submitted that when looking at the determination as a whole adequate reasons were provided. The Judge heard evidence and was best placed to say what he accepted. Even based on the summary of the evidence, there was sufficient evidence to make the findings in relation to his family. At paragraph 50 the Judge accepted that he was not in possession of a passport and accepted that he did not have a CSID and was not in contact with his family. There were references to the fact that due to the distance of time he would have ceased to have contact with his family and references to attacks in Kirkuk. The Judge was entitled to accept some evidence and reject other evidence. It was important that at paragraph 28 he specifically considered the fact that the Secretary of State took issue with the Claimant's credibility. He accepted that the Claimant had to travel across Europe and noted that there was no evidence to undermine the assertion that he had no ID documents. The

Judge was entitled to find there was no evidence to undermine the Claimant's assertion in relation to this and to infer from the fact that he left in July 2015 that he no longer had contact with his family. It was not speculative or inadequately reasoned but was based on evidence provided by the Claimant. The Judge noted at paragraph 35 of the decision that he had taken all the evidence into account and one was entitled to infer that he had read the evidence including the objective evidence on an attack in Kirkuk which was consistent with the Claimant's account. He was entitled to infer and accept that this attack would have contributed to the Claimant losing contact with his family. The Judge considered the whole process required to obtain a CSID in accordance with **AA (Iraq) [2017] EWCA Civ 944**. The Judge carried out a clear consideration of the objective position. It was important that he did not state that the Claimant was unable to go to his home governorate but that it was likely to present him with some difficulty. The Secretary of State was wrong to say at paragraph 7 of the grounds that the Judge concluded he could not go there because that is not what he found. He found as a result of the deficiencies of knowledge in the country guidance that the Claimant could not do this. After finding that the Claimant had no formal documentation he did not need to consider whether he should go to the UK Iraqi embassy because he had no access to instruct a proxy. The Judge had properly considered **AA** and applied it to the facts.

10. The First-tier Tribunal found that Kirkuk was a non-contested area. This was wrong in principle as it was not in accordance with **AA**. However, whether it was contested or not had limited impact on the considerations in the appeal. Regardless of whether it was contested or not the First-tier Tribunal's findings still stood.
11. In relation to the issues surrounding relocation the Judge properly considered all of the factors in **AA** and looked at whether the Claimant could avoid undue harshness. It was submitted that the Upper Tribunal could make the decision that it was a contested area and in accordance with paragraph 12 of the skeleton there were no strong grounds to depart from **AA**. Even if the Judge erred in law in finding that it was a non-contested area it did not stop the Claimant succeeding in his claim. It was important that it was the Secretary of State's case that it was a non-contested area but that it was not a viable option for return and it was suggested he could be returned to the KRI. Therefore, the Secretary of State could not go behind that proposition and the Claimant could only safely return to the KRI. Return to Kirkuk was not put before the Judge. Secondly, in relation to its impact on the Claimant's ability to obtain a CSID, the First-tier tribunal did not find he could not get one because he could not go to his office but considered that he could go to that office but would be unable to get one due to the absence of a network. She submitted that the Judge's reasoning in relation to the Claimant's inability to obtain a CSID and the unreasonableness of return was good. She asked me to dismiss the Secretary of State's appeal and to remake the decision in relation to the cross-appeal.

12. Mr Howells replied that at paragraph 47 of the decision the Judge gave no reason as to why he accepted that the Claimant did not have easy access to family network. It should not be for the reader to infer reasoning. It should be clear. The contrast between his two sets of findings made it more important that the reasoning should be clear. Just because there was an attack in Kirkuk did not mean that one could infer from this that the Judge considered that this was the cause of the loss of contact. If the Claimant did have contact it would be easier for him to obtain a CSID. It was a key issue. In relation to whether Kirkuk was a contested area, the Judge's findings could be clearer and it was rather unclear from the determination whether the Judge found that the Claimant's area was contested or not. At paragraph 58 he seemed to say that the Claimant had no claim under the Refugee Convention and was not at Article 15 C risk. If that was the case, he had no need to consider relocation unless there was a risk in his home area. He made reference to the IKR as if it was a place of relocation. It was an additional reason why the decision should be set aside and listed for a de novo hearing. He asked me to preserve the adverse findings in relation to the honour killing. The other issue should be the subject of a further hearing.
13. Miss Pollard replied that at no point had the Secretary of State said that he could be safely return to Kirkuk and the Judge had considered the case in accordance with the Secretary of State's position. He could not be criticised for determining the appeal in relation to the Secretary of State's position. It was the Secretary of State's position that he could only be returned to the KRI. With regard to the Secretary of State's point that he should have a de novo hearing only in relation to the humanitarian protection ground she submitted that if it was to be a de novo hearing it should be in relation to the entirety of the Claimant's claim.

## **Discussion**

14. I deal firstly with the Secretary of State's appeal. It was the Claimant's case that he would be at risk on return to Iraq due to a threatened honour killing arising out of his relationship with a young woman. The First-tier Tribunal's findings in relation to this claim are at paragraphs 43 to 46. The Judge found, at paragraph 44 and 45:

"44. He has given what I believe is a speculatively prepared story that is full of inconsistencies and which has been composed purely as a means of supporting an otherwise un-meritorious asylum claim.

45. I do not believe that it is credible that his family would have proposed his marriage to a girl whom he had little more than seen in the street and of whose family they had no knowledge at all".

15. The Judge found that the relationship between the Claimant and the young woman was not genuine and that he was not at risk of an honour killing. The Judge then addressed the issue of whether or not he would have access to a family network in Kirkuk. This was clearly of relevance to the Claimant's ability to obtain a CSID and his returnability.

16. The Judge found at paragraph 47:

"I tend to believe, however, applying the lower standard of proof, that he does not have any or any easy access to a family network in Kirkuk. That leads me to consider the findings I should make as to whether he can be safely return to Iraq given his accepted status as a Kurd from Kirkuk. That will present critical difficulties for the Claimant's return, some three years after leaving Iraq and his onward journey to the UK under the control of an agent."

17. I have considered all of the arguments advanced on behalf of the Claimant in the Rule 24 response, the skeleton argument and in submissions. Whilst it is of course not an error of law to accept aspects of an individual's evidence and disregard others, it is also trite law that adequate reasons must be given for material findings such that each party knows why it has won or lost. The First-tier Tribunal at paragraph 31 set out the Claimant's evidence in relation to his claim in relation to his contact with his family. The Judge noted that the Claimant claimed that his family did not have mobile phones but that he had been in contact with them until relatively recently. He recorded the Claimant's evidence that he had not heard from his family since there was an attack on Kirkuk on 16 October 2017. He further noted his evidence that he had no friends remaining Iraq and was not in contact with anyone in his home country now.

18. The issue of whether or not the Claimant was in contact with his family was clearly a material one because, as the Judge noted at paragraph 55 of the decision, a CSID was required by an Iraqi national to access financial assistance from the authorities, employment, education, housing and medical treatment. Further, the Secretary of State acknowledged in principle that if there was no family or other members likely to be able to provide a means of support and applicant was in general likely to face a real risk of destitution amounting to serious harm if by the time any funds provided to him by the Secretary of State to assist his return had been exhausted and it was reasonably likely that he still would have no CSID. At paragraph 62, the Judge found that there was no evidence that the Claimant would be able to obtain a CSID on return.

19. It is clear from the decision that the Judge wholly rejected the Claimant's account in relation to the core of his claim to be at risk, such that he found that it was a complete fabrication. However, in paragraph 47, the Judge gave no reasons why he found that the Claimant would not have any access to his family network in Kirkuk. It cannot be inferred from the fact that the Judge recorded that it was the Claimant's evidence that there was an attack on Kirkuk in October 2017 that he concluded this was the reason the Claimant did not have contact with his family. In view of the fact that the Judge found that the Claimant had given a fabricated account it was all the more incumbent on him to give clear reasons why he accepted that the Claimant was no longer in contact with his family. In the circumstances, I therefore find that the Judge gave inadequate reasons in relation to a material matter, as these findings led to his conclusion at

paragraph 63 that the Claimant would be at risk of serious harm on return. It follows therefore that the Secretary of State succeeds in his appeal.

20. I also find that the Judge erred in law in failing to determine the matter in issue between the parties, namely whether Kirkuk was a contested area for the purposes of Article 15 (c) of the Qualification Direction. He states at paragraph 48 that his home area is a non-contested area. In so doing he failed to consider whether there were very strong ground supported by cogent evidence for departing from the conclusions in **AA** that Kirkuk was a contested area (**SG (Iraq) v SSHD** [2012] EWCA Civ 940).
21. In the circumstances I find that the decision that the Claimant should be granted humanitarian protection must be set aside. There was no cross-appeal in relation to the asylum decision and consequently those findings must stand. I have had regard to **Ortega (remittal; bias; parental relationship)** [2018] UKUT 00298 (IAC). In the light of the fact finding required in relation to the Claimant's entitlement to humanitarian protection in accordance with part 7.2 of the Practice Statement I remit this matter for a hearing to determine the Appellant's claim for humanitarian protection before a Judge other than Judge B Lloyd.

### **Notice of Decision**

The decision of the First-tier Tribunal in relation to the Claimant's claim to humanitarian protection contained a material error of law and I set it aside. The dismissal of the asylum claim stands.

I remit this matter for a hearing to determine the Appellant's claim for humanitarian protection before a Judge other than Judge B Lloyd.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Claimant 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 Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 12 October 2018



Deputy Upper Tribunal Judge L J Murray