



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13343/2017

THE IMMIGRATION ACTS

Heard at Manchester Magistrates Court
On 30th July 2018

Decision & Reasons Promulgated
On 06th August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHANKAR [R]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs H Aboni (Senior Home Office Presenting Officer)

For the Respondent: Mr Holmes (Citizens Advice Bolton)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State in relation to a decision of Judge Lloyd in the First-tier Tribunal promulgated on 8th February 2018. For the sake of continuity and clarity I will continue to refer to Mr [R] as the Appellant and the Secretary of State as the Respondent in this judgment.
2. Judge Lloyd was hearing the appeal of an Iraqi citizen born on 25th July 1990 who had arrived in the UK in November 2015 and claimed asylum. His application was refused

by the Secretary of State on 1st December 2017 and it was his appeal against that decision which came before Judge Lloyd.

3. In her decision Judge Lloyd found the Appellant's claims as to what took place in Iraq to be entirely without credibility. He had claimed to be at risk from Daesh and the Judge did not accept that claim and found at paragraph 52 of her Decision and Reasons that he was not therefore outside his country of nationality by reason of a well-founded fear of persecution for a Convention reason.
4. The Judge went on to consider article 15C humanitarian protection. She noted the Appellant was of Kurdish ethnicity born in Kirkuk province; not Kirkuk city and therefore not from the IKR. She noted that Kirkuk city and Kirkuk province were contested regions and therefore the Appellant could not be returned safely to his home area.
5. She then considered whether it would be possible for him to relocate to the IKR or Baghdad and found that it would be unduly harsh for him to do so. On that basis, whilst dismissing the appeal on asylum grounds, she allowed it on humanitarian protection grounds.
6. The Secretary of State, in her grounds, argued that having found the Appellant not credible in respect of his asylum claim, the Judge then went on to make contradictory findings by accepting his claim not to speak Arabic and not to have contacts or support in Iraq. Mrs Aboni also said the Judge's reasoning was also contradicted by the fact that the Appellant had previously been allowed to enter the IKR on two occasions when he worked in both Erbil and Sulaymaniyah.
7. The grounds also argued that he could attempt to obtain a CSID via a proxy in Iraq and therefore return to Baghdad was feasible as he had family there who could help him to obtain the necessary documents.
8. Before me Mrs Aboni relied upon those grounds that the Judge had erred in making contradictory findings that on the one hand he was not credible but on the other hand his claims about his situation in Iraq were credible
9. Mr Holmes submitted that the case was not helped by the Respondent mistakenly thinking, in the letter of refusal, that the Appellant came from the IKR when he did not. That was accepted at the hearing before the First-tier Judge. He submitted that as a matter of law, a Judge can find an Appellant's asylum story incredible but other parts of his claim to be credible and it is not an error of law to do so. He submitted that if an asylum claim was found to be false that does not mean that a Judge cannot go on to consider humanitarian protection. If it did then humanitarian protection would have no role at all. That submission I find to be overstating the situation. A person can be considered for humanitarian protection notwithstanding his asylum claim fails as it may fail for other reasons, such as it discloses no Convention reason. However, I do agree with Mr Holmes that a Judge is entitled to accept some parts of a claim whilst rejecting others. Indeed, the Judge points out that fact herself in paragraph 63 where she says:-"in considering his ability to internally relocate, I have borne in mind that

the Appellant can be disbelieved in respect of some parts of his claim, but may be telling the truth in respect of other parts.”

10. The Judge was entitled to accept that the Appellant could speak only a few words of Arabic and was not fluent when his first language is Kurdish Sorani. She was entitled to accept his evidence that he has no family members or friends in Baghdad who could accommodate or support him. She was entitled to accept he has no CSID card. Her conclusion, at paragraph 60 of the Decision and Reasons that:- “without any friend or family or sponsor there, without a CSID card, being from a minority community without being able to speak fluent Arabic, I do find that the Appellant would have extreme difficulty in being able to find accommodation and employment in Baghdad. I therefore find that it would be unduly harsh for him to relocate there.
11. Additionally, she found at paragraph 61 that his Sunni ethnicity and the fact he has been in a western country for over two years would increase problems and potential risks for him in Baghdad. She also noted the case of BA (returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) that the authorities in Baghdad are unable, and in the case of Sunni complainants, unlikely to be willing to provide sufficient protection in Baghdad.
12. The Judge did go on to consider the possibility of internal relocation to the IKR but accepted that he had no family there to assist him and although he had visited twice for work he had not stayed in the IKR. The Judge also noted the Appellant would have to travel from Baghdad to the IKR and may encounter difficulties being a Sunni minority Kurd if stopped at checkpoints within Baghdad as described in BA. She found it would be difficult for him to travel in safety in order to get to the IKR and that as he had no family there to help him integrate she found it would be unduly harsh for him to relocate to the IKR.
13. The Judge has given adequate reasons for her findings and the suggestion by the Secretary of State that she has made an error of law is without merit.
14. Accordingly, the appeal by the Secretary of State to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed

There having been no application for an anonymity direction and the First-tier Tribunal not having made one, I see no justification for directing anonymity and do not do so.

Signed

Date 30th July 2018

Upper Tribunal Judge Martin