



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00932/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 15th May 2019

Decision & Reasons Promulgated
On 8th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Young, Home Office Presenting Officer

For the Respondent: Mr. Hedley-Daley, Genesis Law Associates Ltd

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") Judge made an anonymity order. As the appeal concerns a claim for asylum and international protection it is in my judgement, appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. DK is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly

identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant in the appeal before me is the Secretary of State for the Home Department and the respondent to this appeal is DK. However, for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the *FtT*. I shall in this determination, refer to DK as the appellant, and the Secretary of State as the respondent.
3. The respondent appeals against the decision of First-tier Tribunal ("*FtT*") Judge Andrew promulgated on 17th July 2018, allowing the appellant's appeal.
4. The background to the appellant's claim is set out at paragraph [5] of the decision of the *FtT* Judge. At paragraph [6] of her decision, the *FtT* Judge refers to an Immigration Officer's report dated 9th February 2016, in relation to documents relied upon by the appellant. The appellant had relied upon a personal ID card that he claimed was issued by the General Directorate of Nationality, in Iraq, in April 2014. The appellant sought to use the ID card as evidence of his claim that he was born on 1st September 1998. The respondent claimed that the ID card relied upon was fraudulent. The *FtT* Judge heard evidence from the appellant and her findings of fact and analysis of the evidence is set out at paragraphs [16] to [38] of the decision.
5. Having heard the evidence, the *FtT* Judge found the appellant not to be a credible witness. The judge was concerned about the appellant's evidence as to the ID card relied upon by the appellant, and his explanation as to when it had been obtained. The Judge accepted that the appellant is an Iraqi national of Kurdish ethnicity. The Judge was also prepared to accept that the appellant is from Jalawla and at paragraph [24] of her decision, the Judge notes that it is accepted by the respondent that the town from which the appellant comes, is in a disputed area, and that he could not return there.

6. At paragraph [25] of the decision the Judge states that because of inconsistencies in the evidence, she was unable to be satisfied that the appellant's parents are dead, or that he no longer has any contact with his aunt in Iraq. The Judge was also not satisfied that the appellant's uncle wishes to recruit him for ISIS as he claims. At paragraph [31] of the decision, the FfT Judge found that both the ID card and Nationality Certificate relied upon by the appellant, are documents on which no reliance can be placed.
7. The Judge properly notes at paragraph [33] of her decision that the first matter she must decide is whether the appellant is able to obtain a new CSID. The Judge was satisfied that it is reasonably likely that the appellant has family in Iraq to whom he may turn. However, the Judge was not satisfied that the relevant city registration office would be operational. The Judge relied upon a short newspaper article published in the 'Independent', on-line, on 12 December 2015 to support her conclusion that Jalawla remains a ghost town after being recaptured from ISIS. The Judge refers to a photograph that accompanies the short article, "...showing the devastation apparently caused in the town.".
8. At paragraphs [35] and [36], the FfT Judge concludes as follows:
 35. It follows from this that the appellant would not be able to obtain a valid CSID. Thus, he would be unable to travel to the IKR. In this regard I have noted paragraph 5 of the head note of AAH
 36. Even if I was wrong about this and he was able to travel there, the appellant has no family in the IKR. It is unlikely he would be able to obtain employment for himself. He has no skills or qualifications. He could not work without a CSID and he is from an area with a marked connection with ISIL."
9. The Judge noted, at [37], that the appellant could apply for a grant under the respondent's voluntary return scheme and that would give the appellant access to £1500. The Judge noted that "... *There is nothing before me to show that he would have access to any other form of funds.*". The judge concluded, at [38], that she was satisfied that internal relocation is unreasonable.

The appeal before me

10. Permission to appeal was granted by FfT judge Davies on 13th August 2018. The matter comes before me to consider whether the decision of FfT Judge Andrew involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
11. The respondent submits that the Judge found the appellant not to be a credible witness and found that both the ID card, and Nationality Certificate relied upon by the appellant are documents on which no reliance can be placed. Having made significant adverse credibility findings against the appellant and having that the appellant is likely to have family in Iraq to whom he may turn, it was incumbent upon the Judge to carefully consider whether the appellant has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. The respondent submits that the judge failed to properly consider what if any support might be available from the appellant's family in Iraq.
12. Before me, Mrs Young submits that the question for the FfT Judge was whether the appellant has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. She submits that the Judge fails to address the support that would be available to the appellant from his family, and the steps that may be taken by them to assist him in obtaining the relevant documents. The Judge fails to consider the financial support that is potentially available to the appellant from his family upon return. Mrs Young submits that the appellant has not made any reasonable efforts to locate his family, and the Judge fails to make any adequate or rational findings as to the whereabouts of the appellant's family. The respondent submits that this failure is material to the outcome of the appeal because the appellant's ability to obtain the necessary identity documents, and the financial support available to him, is relevant to the question of whether the appellant could return to the IKR.
13. In reply, Mr Medley-Daley submits that it was open to the Judge to find that the City Registration Office in Jalawla would not be operational. He submits that the

appellant does not have the necessary documents that would enable him to travel to the IKR, and internally relocate. He submits that the appellant would be unable to travel to Erbil without a CSID and the test is whether it is reasonably likely that the appellant could get a CSID either in the UK or upon arrival in Baghdad.

Discussion

14. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.
15. In AAH, the Upper Tribunal replaced section E of the Country Guidance annexed to the Court of Appeal’s decision in AA. The Upper Tribunal confirmed that whilst it remains possible for an Iraqi national returnee to obtain a new CSID whether the individual is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. The Tribunal set out the relevant factors, including *inter alia* whether the individual has any other form of documentation, or information about the location of his entry in the civil register, and the location of the relevant civil registry office and whether it is operational.
16. The Country guidance confirms that even a Kurd who does not originate from the IKR may enter the IKR lawfully for up to 10 days, and then extend his stay to settle there, having found employment. There is a need to consider wider issues such as travel between Baghdad and the IKR, the documents that will be available to an individual, whether the individual will be at particular risk of ill treatment during

the security screening process, and the options available for accommodation and employment.

17. In my judgement, the FfT Judge has failed to consider whether the appellant's family, who the Judge appears to find are still in Iraq, would be able to assist the appellant obtain replacements of the appellant's CSID or other documentation. At paragraphs [34] and [35] of the decision, the FfT Judge fails to adequately consider whether the appellant is able to obtain a new CSID, or do so within a reasonable time frame, and whether support could be available from the appellant's family, in light of the finding that the appellant is likely to have family in Iraq to whom he may turn. The Judge fails to undertake the very careful fact sensitive analysis of relevant factors, that is required to enable a reader of the decision to understand the basis upon which the Judge reached her decision, correctly applying the relevant country guidance.
18. It follows that in my judgment, the decision of the FfT Judge is infected by a material error of law and must be set aside. As to the disposal of the appeal, both Mrs Young and Mr Medley-Daley submit that the appropriate course is for the matter to be remitted to the FfT for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.
19. It is however appropriate to preserve the findings of FfT Judge Andrew that:
 - a. The appellant is a national of Iraq and of Kurdish ethnicity.
 - b. The appellant is from Jalawla, a city in the disputed area.
 - c. The appellant has family in Iraq.

Notice of Decision

20. The appeal is allowed and the appeal is remitted the FfT for a fresh hearing of the appeal with the findings that I have set out at paragraph [19] above, preserved.
21. I have made an anonymity direction.

Signed _____ Date 21st June 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter for re-hearing before the FfT. In any event, no fee was paid and there can be no fee award.

Signed _____ Date 21st June 2019

Deputy Upper Tribunal Judge Mandalia