



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02820/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision and Reasons
Promulgated**

On 20th June 2019

On 16th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

A Q

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Chaudry, Latta & Co, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal against a decision by Judge of the First-tier Tribunal C Burns first came before me on 29th March 2019. On that occasion Mr Chaudry was disadvantaged by not having received the papers from the previous representatives to allow him to prepare adequately. The hearing had to be adjourned. There was, however, some discussion of the grounds of the application for permission to appeal, in which the focus was on paragraph 67 of the decision of the Judge of the First-tier Tribunal on the issue of whether the judge gave adequate reasons for departing from the relevant county guidance.

2. At the hearing on 29th March 2019 a direction was made requiring a skeleton argument on behalf of the appellant to be lodged no later than 14 days prior to the resumed hearing. This direction was not complied with as the skeleton argument was served on the respondent only the day before the resumed hearing. Mr Chaudry explained that he had still had difficulty in obtaining the appeal papers and this accounted for the late submission of the skeleton argument. I indicated to the parties that I would be very reluctant to grant a further adjournment.
3. Mr Govan contended that the skeleton argument went beyond its intended scope and amounted to an attempt to rewrite the application for permission to appeal. I informed the parties that although the skeleton argument was late and the point raised by Mr Govan seemed to have some merit, I would accept the skeleton argument as if it were a written submission lodged at the hearing. Mr Govan would be entitled to challenge any aspect of it which fell outwith the grant of permission to appeal.

Submissions

4. The principal submission for the appellant was that the Judge of the First-tier Tribunal made a finding on risk on return without giving adequate reasons for departing from the country guidance on Iraq set out in the Annex to AA (Iraq) [2017] EWCA Civ 944. The judge found at paragraph 67 that if the appellant had to return to his home town, referred to as “Smód”, to obtain a CSID the evidence did not show that he would face an Article 15(c) risk in so doing, assuming Smód was in the region of Kirkuk and not in the IKR. The judge recorded at paragraph 67 that the government had regained control in Kirkuk. The evidence relied upon in this regard by the judge was supposedly to be found at paragraph 30 of the decision. In this paragraph the judge referred to an Amnesty International report of February 2018 and a Country Policy & Information Note (CPIN) from the Home Office of September 2017 but no mention was made of the situation in Kirkuk in paragraph 30.
5. Mr Chaudry maintained that in terms of the country guidance Kirkuk was still a contested area. A further country guideline decision issued after the decision of the First-tier Tribunal in this appeal, namely AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212, amended part of the country guidance in AA (Iraq) but did not alter the finding that in contested areas, such as Kirkuk, there was an Article 15(c) risk, contrary to the finding by the Judge of the First-tier Tribunal.
6. Mr Govan submitted that the only issues before me were whether the judge had made a proper finding as to where the appellant originated from in Iraq and whether the appellant could relocate to Baghdad. The appellant had a CSID at the time he left Iraq and his family could send him this from Kirkuk. In addition, I understood it to

be Mr Govan's position that there was no longer an Article 15(c) risk in Kirkuk. I note also that according to Mr Govan a further country guideline decision is anticipated.

Discussion

7. The Judge of the First-tier Tribunal sought to take a structured approach to the issue of internal relocation but did not make adequate findings or give proper reasons to support the conclusions reached. In terms of the country guidance in AA, a CSID would be required for a viable relocation to Baghdad. The judge considered the question of return to Baghdad but, on the available evidence, did not seem able to make a finding on a suggestion by the appellant that his CSID had been destroyed. The judge found that the appellant would be able to travel from Baghdad to Smod to obtain a new CSID without encountering an Article 15(c) risk. The difficulty is that the judge's analysis of whether the appellant could safely travel to Smod to obtain a new CSID, assuming a new one was required, did not follow the country guidance in AA (Iraq) and nor, of course, the more detailed guidance in AAH on obtaining a CSID. Strong reasons based on firm evidence would be required for a judge to depart from the current country guidance on internal relocation. Neither the evidence referred to by the judge at paragraph 30 of the decision nor the reasons given at paragraph 67 were adequate for this purpose.
8. Having heard the submissions of the parties I was satisfied that the Judge of the First-tier Tribunal erred in law by failing to give adequate reasons for departing from the relevant country guidance on the Article 15(c) risk facing the appellant on return to Iraq. In consequence the decision of the First-tier Tribunal is set aside.
9. The question then arises of how the decision may be re-made. I suggested to the parties that the decision might be re-made in accordance with the current country guidance based on the finding at paragraph 57 of the decision that Smod, the town or village from which the appellant appeared to originate, was near Kirkuk. Mr Govan drew to my attention, however, that at paragraph 60 the Judge of the First-tier Tribunal stated that on the evidence it was not possible to say whether the appellant was born and raised in IKR or in another part of Iraq. Mr Govan submitted that the judge made contradictory findings over the appellant's origins at paragraphs 57 and 60. I can only agree with this and I find that this constitutes a further error of law.
10. Because of the contradictory findings over the appellant's place of origin a further hearing is required at which evidence may be led. If there is to be a hearing involving further evidence, it should not be limited to only one issue but should allow for findings to be made on other matters in contention. In view of the extent of fact-finding required the appropriate course is for the appeal to be

remitted for a fresh hearing before a differently constituted First-tier Tribunal with no findings preserved, in accordance with paragraph 7.2(b) of the Practice Statement.

11. In rehearing the appeal, the First-tier Tribunal will have to have proper regard to the relevant country guidance, including any which may be issued before the appeal is reheard. It is likely to be of crucial importance that the Tribunal makes findings on from where the appellant originates and whether he has, or could safely obtain, a CSID.

Conclusions

12. The making of the decision of the First-tier Tribunal involved the making of an error of law.
13. The decision is set aside.
14. The appeal is remitted for a fresh hearing before a differently constituted First-tier Tribunal with no findings preserved.

Anonymity

The direction for anonymity is continued in the following terms to preserve the positions of the parties until the appeal is decided. Unless or until a court or tribunal directs otherwise no report of these proceedings will identify either directly or indirectly the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may give rise to contempt of court proceedings.

M E Deans
Dated 10th July 2019
Deputy upper Tribunal Judge

