Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04272/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On May 3, 2019	**On May 17, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

K A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, Counsel, instructed by Knightbridge Solicitors
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant entered the United Kingdom on March 14, 2017 and claimed asylum on March 17, 2017. The respondent refused his application under paragraphs 336 and 339M/339F HC 395 on March 12, 2018.

The appellant appealed this decision on March 28, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002, arguing he would be persecuted based on his imputed political opinion and ethnicity.

The appellant's appeal was heard by Judge of the First-tier Tribunal Devlin on May 10, 2018 and in a decision promulgated on June 19, 2018 the Judge dismissed the appellant's appeal both on protection and human rights grounds.

Permission to appeal was granted by Designated Judge of the First-tier Tribunal Shaerf on a limited basis on the ground that the Judge had relied on the Court of Appeal decision in AA (Iraq) v SSHD [2017] EWCA Civ 944, which had been superseded by the Upper Tribunal decision in AAH (Iraqi Kurds - internal relocation) Iraq (CG) [2018] UKUT 212 (IAC).

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.

SUBMISSIONS

Ms Patel acknowledged that permission to appeal had been on a limited basis and argued that the Judge had erred by failing to consider the more recent country guidance decision despite the fact it had been handed down subsequent to the promulgation of the Judge's decision. She relied on the Upper Tribunal decision of Adam (Rule 45: authoritative decisions) [2017] UKUT 00370 (IAC) as evidence that the Tribunal should take account of country guidance decisions and she invited the Tribunal to ignore the Court of Appeal decision in NA (Libya) v SSHD [2017] EWCA Civ 143.

Mr Tan opposed the application and submitted that the Court of Appeal had made clear in NA (Libya) that country guidance decisions were not to be used to set aside previous Tribunal decisions and he referred me to paragraph 27 of that decision. In SA (Sri Lanka) v SSHD [2014] EWCA Civ 683 the Court of Appeal held there was no error of law by the Upper Tribunal in deciding an asylum claim on the basis of a country guidance then in force and that the correct remedy where the country guidance had changed was for an applicant to make further submissions under paragraph 353 HC 395 based on new guidance.

FINDING ON ERROR IN LAW

Permission to appeal had been granted on a very narrow basis and the sole issue to consider was whether this Tribunal had the power to revisit the Judge's decision in circumstances where a country guidance decision had been issued after the promulgation of the decision.

Both representatives presented contrary arguments, and both relied on different decisions in support of their arguments.

Ms Patel referred me to the decision of Adam and in particular paragraph 8, in which the Upper Tribunal stated:

> "We emphasise, however, the restrictions which specifically appear within Rule 45. What this decision does is to open the possibility of review to cases where the decision of the Upper Tribunal which is under challenge by an application for permission to appeal to the Court of Appeal is one which might have been affected by an authoritative decision within the terms of paragraph 12 of the Practice Direction. The power to review still only arises where the authority in question could have a material effect on the decision. In terms of Rule 45(1)(a) it may be that a complete failure to notice the existence of a relevant country guidance decision might constitute overlooking it but nevertheless a question on review would have to be whether the country guidance decision in question could have had a material effect on the decision of the Upper Tribunal and similar considerations related to paragraph (b). Therefore this decision opens a door to review: it does not mean that every case where there is a country guidance decision in existence or in issue the power to review would be exercised."

It is important to note that this decision is not an authority to review all decisions and, in particular, the decision refers to a review of a decision of the Upper Tribunal rather than a decision of the First-tier Tribunal. Rule 45 of the Tribunal Procedure (Upper Tribunal) Rules 2008 specifically refers to "Upper Tribunal's consideration of an application for permission to appeal".

Mr Tan argued that the Court of Appeal had emphasised, in NA (Libya), that the issuing of a country guidance decision after the promulgation of a decision does not mean the original decision was wrong. Reliance was placed on SA (Libya) and the fact that the appellant would have the option to revisit the issue by way of fresh grounds of appeal.

Having considered the submissions, I find this case could be covered by Rule 45 of the 2008 Rules because it is an application for permission to appeal. The guidance issued by the Upper Tribunal in Adam makes it clear that not every case is affected by the subsequent issuing of a country guidance decision.

Iraq is an unusual country in that the situation on the ground is "fluid" but significant factors in this appeal is that AAH was promulgated seven days after the First-tier Judge issued his decision and AAH is therefore based on factors in existence at the time the Judge heard the evidence.

The Judge decided the case on evidence before him and made clear findings, but he did not have the benefit of hearing from experts who gave evidence to the Upper Tribunal in AAH. The country evidence in AAH must have relevance and I therefore find, through no fault of the Judge, there is an error because the country information in AAH does impact on how the Judge should approach the case.

Having found an error in law, I invited both Ms Patel and Mr Tan to make oral submissions on the remaking of the decision.

Mr Tan submitted there was no dispute that the appellant was from the IKR and the First-tier Judge made findings on the appellant's case which included:-

the appellant's passport was with the German authorities;

the appellant's documents had not been destroyed as claimed and

he had contact to his family, who continued to live within the IKR.

He submitted that, given those circumstances, it would be possible for the appellant to obtain the necessary documents he would need (either a passport or a CSID) to enable him to return to Baghdad. The appellant's mother was a lawyer working within the IKR and his father owned a car dealership and the appellant remained in contact with them. His family would be able to assist him obtain his documentation. There were also direct and viable flights now running between London and the IKR but only if an appellant was willing to fly back voluntarily.

Ultimately, that was a matter for the appellant but that was also an option and it was also possible for him to fly to Baghdad and then obtain a certification letter in line with the Home Office Policy Guidance and Information document dated February, 2019.

Ms Patel submitted that the key issue in this case was whether he could obtain a CSID or passport either in the United Kingdom or within a reasonable period of time. She relied on the guidance issued in AAH and submitted that it would not be possible for the appellant to obtain either. His passport remained with the German authorities and whilst he was in contact with his family there was no evidence he would be able to obtain his documents to make the application in the United Kingdom or to obtain travel documents once he arrived in Baghdad, bearing in mind he was a Kurdish Sunni Muslim.

FINDINGS ON RETURN TO THE IKR

Having made a finding that there was an error in law, it is necessary to refer to the guidance that had been issued in AAH.

The Upper Tribunal stressed that whilst it remained possible for an Iraqi national to obtain a new CSID, the crux of the issue was whether he would be able to do so within a reasonable timeframe and the Tribunal found that would depend on individual circumstances.

In this case, we know that the appellant had a CSID as he stated as much in his evidence and we also know he had been issued with a passport, which, he stated, was with the German authorities. The appellant is therefore in a better situation to that facing other Iraqi nationals. The appellant is in contact with his family in the IKR, which, again, can be contrasted with many appeals coming before this Tribunal where appellants state they have no family to whom they can turn to.

The headnote in AAH sets out the difficulties that could be envisaged in a case such as this. The decision stresses that without a valid CSID or Iraqi passport a journey from Baghdad to the IKR is neither practical nor affordable but where a person has such documentation then the journey can be made without a real risk of persecution or serious harm or a breach of Article 15(c).

Mr Tan provided evidence of direct flights from the United Kingdom to the IKR and although I accept these are on a voluntary basis the fact remains there are flights available. He is a person who has family and the obtaining of his documents should not present the same problems as encountered by many other Iraqi nationals. He can contact the German authorities to obtain his passport or, alternatively, he can approach the Iraqi Embassy in London to try and obtain his documentation. To do so and to obtain a CSID he has to complete an application form which has to be signed by his family which should be stamped by an embassy or consulate, he must produce his Iraqi passport, the name of a representative in Iraq and an additional form completed by his family verifying the contents of his application form are true. All of this could be done by the appellant although, clearly, he may be extremely reluctant to cooperate. There was no suggestion that there were any difficulties in obtaining records relating to his wife and child.

Alternatively, there is the option for his family to sort out his paperwork in Iraq. At paragraph 27 of AAH the expert witness recorded the fact that he was able to obtain a CSID from the office in Sulaymaniyah in one day, albeit where such an application is being made from the UK the process is not as straightforward. The point is that this appellant does have family to whom he can turn to. There is nothing to prevent the appellant's family meeting him in Baghdad, if he chooses to fly to Baghdad, to arrange his paperwork. His family are persons of means because one is a lawyer and one runs their own business.

I therefore find he would have the assistance of family in the IKR and accommodation in the IKR would therefore not be an issue. Any time spent in Baghdad would be limited for the reasons set out above.

The February 2019 guidance addresses the issues of returns from paragraph 2.7.8 onwards. The appellant has either a current or expired Iraqi passport with the German authorities and no reasonable explanation has been put forward as to why this could not be recovered by him.

Taking into account all of the findings made by the First-tier Judge in this matter, there appears to be no good reason why this appellant would be unable to be returned to Iraq with his family. In the circumstances, I find returning the appellant would not breach either his refugee claim or his humanitarian protection claim or Article 3 ECHR.

Decision

There was an error of law. I set aside the original decision and I remake the decision by refusing the appeal on protection and human rights grounds.

Signed Date 16 May 2019

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award is made because I have dismissed the appeal.

Signed Date 16 May 2019

Deputy Upper Tribunal Judge Alis