



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: PA/04807/2018
PA/06405/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 24 January 2019**

**Decision & Reasons
Promulgated
On 04 March 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**W M
D F
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms A Pollard, instructed by Adam Khattak Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellants. A failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellants are citizens of Iraq who were born on [~] 1976 and [~] 1999 respectively. They come from a place in Iraq, not far from Baghdad to the north, known as Saluhaddin (or Salah Al Din). They came to the United Kingdom in May 2013 as the dependants of the first appellant's husband. He was studying for a PhD in the UK. The first appellant also has four other children, the youngest of whom was born in the UK.
3. In October 2017, the first appellant claimed asylum. She claimed that she would be at risk on return to Iraq because her father had been a Brigadier General in the regime of Saddam Hussain. She claimed that in July 2017, a letter had been left at her brother's address in Baghdad threatening to kill him and the first appellant.
4. On 9 March 2018, the Secretary of State refused the first appellant's claims for asylum, humanitarian protection and on human rights grounds. The second appellant's claims, which it is accepted are dependent upon the claims of the first appellant, were also refused on that date.

The Appeal to the First-tier Tribunal

5. The appellants appealed to the First-tier Tribunal. Judge Fowell dismissed both appellants' appeals on all grounds.
6. As regards the first appellant's asylum appeal, the judge made an adverse credibility finding and rejected her account and that she was at risk on return to Iraq from militia.
7. As regards the first appellant's humanitarian protection claim, the judge found that it would be safe for her to return to her home area of Saluhaddin where she would not be exposed to a risk of indiscriminate violence contrary to Art 15(c) of the Qualification Directive. In any event, Judge Fowell found that the first appellant could internally relocate to Baghdad. He concluded that she would have no difficulty in obtaining a CSID and, applying the country guidance annexed to the case of AA (Iraq) v SSHD [2017] EWCA Civ 944, it would not be unduly harsh or unreasonable for her to live in Baghdad where she would have family support available.

The Appeal to the Upper Tribunal

8. The appellants sought permission to appeal to the Upper Tribunal on the single ground that the judge had been wrong in law to find that the first appellant could return to her home area of Saluhaddin safely. That was contrary to the country guidance decision of AA which recognised that area as being a "contested area". Further, that error was material to his decision as the judge had found that the appellants could return to Saluhaddin from Baghdad by road in order to obtain a CSID.

9. Permission to appeal was initially refused by the First-tier Tribunal but, on 1 November 2018, the Upper Tribunal (DUTJ Taylor) granted the appellants permission to appeal. The judge granted permission to appeal on the sole ground pleaded in the grounds of appeal and also on an additional basis, namely that in concluding that the appellant could relocate to Baghdad the judge arguably erred in law because “he ought to have explored further whether she would have family support available in Baghdad – her evidence was that all her relatives had left”.
10. The Secretary of State did not file a rule 24 notice in response to the grant of permission.

Discussion

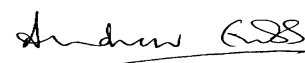
11. At the hearing, I heard submissions from Ms Pollard, who represented the appellants, and also from Mrs Aboni, who represented the Secretary of State. Ms Pollard relied upon both the ground upon which permission to appeal had been sought and also the additional ground upon which permission to appeal had been granted.
12. During the course of submissions, Mrs Aboni accepted that the judge’s decision contained a material error of law and that it should be set aside and remitted to the First-tier Tribunal to re-make the decision on the humanitarian protection claim.
13. Mrs Aboni accepted that the issue of whether the appellants’ home area, namely Saluhaddin, was a place to which the appellants could safely return, had not been raised at the hearing by the Presenting Officer. She accepted that both in the decision letter and at the hearing, the Secretary of State’s position was that the appellants could internally relocate to Baghdad. The Secretary of State had not, before the judge, invited him to depart from the finding in AA that the appellants’ home area was a contested area. Further, Mrs Aboni accepted that, as a consequence, the judge had failed to consider properly whether the appellants could reasonably be expected to relocate to Baghdad and, in particular, whether they could obtain a CSID whether in the UK before travelling or, having returned to Baghdad, in Iraq. She accepted that the judge had found that the appellants would need to return to their home area and obtain a CSID from there. That was, she accepted, not sustainable if indeed that journey would expose the appellants to an Art 15(c) risk in their home area.
14. In my judgment, Mrs Aboni’s concession on behalf of the Secretary of State that the judge’s decision cannot stand is entirely proper. It does not appear that the Art 15(c) risk to the appellants in their home area was contested before the judge. The country guidance decision in AA was in the appellants’ favour. Whilst the judge referred in para 13 of his determination to a *Home Office Country Policy and Information Note* (CPIN) – Iraq: Security and Humanitarian Situation (March 2017), his reference is simply to paras 2.3.27 and 2.3.28 which state the Secretary of State’s policy. It does not set out the evidence upon which that policy is

based and, in choosing to depart from AA, the judge does not engage with any evidence which would be necessary to show that there were “very strong grounds supported by cogent evidence” for doing so (see R (SG) (Iraq) v SSHD [2012] EWCA Civ 940 at [47]). In any event, the issue of departing from AA was not raised at the hearing. It is far from clear, indeed, that the *CPIN* was part of the Tribunal’s documents. It does not appear to be currently in the Tribunal’s file. No-one at the hearing was on notice that the judge might be minded to depart from the country guidance in AA and, as a consequence, the appellants’ Counsel was deprived of the opportunity to make any submissions in that regard, including as to the effect of the *CPIN* or, indeed, any other post-AA evidence which might be relevant in establishing a change of circumstances in the appellants’ home area such that AA could be departed from. That amounted to an error of law which, as Mrs Aboni conceded before me, was material to the judge’s adverse conclusion in respect of the appellants’ humanitarian protection claims. The error tainted his conclusion on the availability of internal relocation to Baghdad because of the issue of whether the appellants could obtain CSIDs.

Decision

15. For these reasons, therefore, I am satisfied that the First-tier Tribunal’s decision to dismiss the appellants’ appeal on humanitarian protection grounds involved the making of an error of law and that decision is set aside.
16. The judge’s decision and findings in respect of the appellants’ asylum claims were not challenged and stand.
17. The proper disposal of the appeal, given the nature and extent of fact-finding required to re-make the humanitarian protection decision, is to remit the appeal to the First-tier Tribunal for a *de novo* rehearing on that issue alone.
18. The judge’s decision to dismiss the appeals on asylum grounds stands.

Signed



A Grubb
Judge of the Upper Tribunal

26 February 2019