



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

Appeal Number: PA/05597/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 17 January 2019**

**Decision & Reasons  
Promulgated**

**On 06 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MASTER R N H-A  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Karnik, Counsel instructed by Paragon Law

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born on 25 February 2001. He claimed to have left Iraq illegally in the summer of 2017 and arrived in the UK in October 2017 having passed through Turkey, France and other unknown countries. Eurodac records indicate that the Appellant claimed asylum in Finland on 14 August 2015 and Germany on 19 September 2016.
2. The Appellant's asylum claim was made on 17 October 2017 and refused in a decision dated 28 June 2018. The basis of his claim is that he had a secret relationship with a girl without the permission of her parents and he

feared persecution on the basis of being also a member of a particular social group *viz* an unaccompanied child. The Respondent rejected the basis of claim, but accepted the Appellant was an Iraqi national of Kurdish ethnicity from Kirkuk with the date of birth claimed.

3. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal James for hearing on 13 September 2018. In a decision and reasons promulgated on 16 October 2018, the judge dismissed the appeal, finding that the Appellant had lied in respect of his immigration history and that as a result of this the conclusions drawn by a clinical psychologist, Ms Ann Malkin, were based upon a narrative provided by the Appellant that itself has not been entirely truthful and he did not find her report persuasive for that reason and did not find the Appellant credible: [35].
4. At [37] the Judge considered the judgments in AA Iraq [2017] EWCA Civ 994 and AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 but found that AAH “...is out of date to the extent that there are now direct flights from the UK into the IKR namely to Erbil and Sulaymaniyah. The Appellant is of Kurdish ethnicity. He can relocate safely into the IKR and the previous difficulty of finding a safe way to travel from Baghdad to the IKR without a CSID has been overcome by the direct flights now available”.
5. Permission to appeal was sought, in time, on two grounds. Firstly, that the judge had erred in failing to apply the country guidance in AAH Iraq (op cit) in that it is clear from the country guidance that returns of former residents of the IKR will be to the IKR and all other Iraqis will be to Baghdad. Given that the Appellant is not from the IKR and is from Kirkuk he will be removed to Baghdad and the judge erred at [37] in failing to adopt this starting point. The judge further erred in failing to take into account that Kirkuk remains a contested area in which an Article 15(c) risk continues to persist and further misunderstood the central importance that a CSID card plays in Baghdad. It was submitted the judge further erred in failing to address the fact that the Appellant remains a minor and that has to be considered as part of the internal relocation alternative.
6. Secondly, it was asserted that the judge erred in his approach to his consideration of the Appellant’s age in his assessment of credibility which, contrary to the judge’s finding, was clearly relevant. The judge failed to have account of the Secretary of State’s own guidance as set out in the skeleton argument as to the impact of age on credibility. The judge failed to provide any or adequate reasons for rejecting the Appellant’s account of why he fled Iraq and failed to deal with the expert and objective evidence before him, in particular the expert, Ms Malkin’s observation at [6.8] that he was suffering with trauma, he had immaturity and difficulty finding words and was functioning at a level of a child far younger than his years.
7. Permission to appeal was granted in respect of the first ground only by First-tier Tribunal Judge S H Smith in a decision dated 29 November 2018.

8. The Appellant's representatives subsequently sought permission to appeal from the Upper Tribunal in respect of ground 2. In a decision dated 14 January 2019, Upper Tribunal Judge Gill granted permission on ground 2, stating as follows:

*"Although Judge James dealt with the psychological assessment of Ann Malkin at paragraph 34 of his decision it is arguable that he has erred in law in his treatment of this report. In particular the judge's reasoning in the final sentence of paragraph 35 of his decision arguably appears to have been made without taking into account the opinion of Ms Malkin that the Appellant is functioning at a level far younger than his years."*

#### *Hearing*

9. At the hearing before the Upper Tribunal, I heard submissions from Mr Karnik on behalf of the Appellant, who sought to rely on the grounds of appeal. I indicated that, subject to anything that Ms Pal might say, that I was with him in respect of ground 1, in that there was a clear failure by the judge to follow the relevant country guidance in respect of return to Iraq. Whilst the Respondent's position is as set out in their own CPIN, the judge failed to give any reasons for finding that the decision in AAH (Iraq) was out of date and essentially preferring the Respondent's evidence as set out in the CPIN, which is a material error of law.
10. In relation to the second ground of appeal, this focused on the expert report of the clinical psychologist, Ann Malkin, who interviewed the Appellant for several hours and had the relevant documentation before her. In her clinical assessment, she found that the Appellant was functioning at a level far younger than his years; that he has traumatic reaction and impaired ability to concentrate and his presentation suggested disassociative reaction, which left him clearly less able to understand his circumstances. He also has difficulty trusting people in authority after his negative experiences of having claimed asylum in Finland and having been in the 'jungle' in Calais.
11. Mr Karnik submitted the judge does not grapple with the points made by the clinical psychologist when he found at [35]:
- "I accept that at the time of departing Iraq he was aged 14 but when making his statement on 9 April 2018 he was aged 17, he had increased maturity, had been in Europe and involved with European immigration authorities for more than two years and had been in a safe environment with legal advice yet he still chose to lie about his narrative even to his own legal advisers"*.
12. Mr Karnik submitted it was well documented how difficult the circumstances are for asylum seeking minors in Europe and in Calais, in particular. He sought to adopt the phrasing of Upper Tribunal Judge Gill in granting permission to appeal. The Appellant's age and maturity are

clearly relevant to his capacity to handle himself were he able to relocate to the IKR.

13. In her submissions, Ms Pal realistically accepted she was in some difficulty in defending the judge's decisions both in respect of ground 1 but also in light of ground 2.

*Decision*

14. In light of Ms Pal's realistic acceptance that the decision of Judge James was materially flawed, both in terms of the failure to follow the extant country guidance set out in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC) and in his assessment of the Appellant's credibility, in light of the expert clinical psychologist report of Ms Malkin, I set that decision aside and remit the appeal for a hearing *de novo* to the First-tier Tribunal in Birmingham.

**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 their 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.

Signed Rebecca Chapman

Date 30 January 2019

Deputy Upper Tribunal Judge Chapman