Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06982/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 5th April 2019	**On 18 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR MIRAN ABDUL KARIM FARAJ
(No anonymity direction made)

Respondent

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr J Chaudry, Latta & Co, Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal Peter Grant-Hutchison allowing an appeal on protection and human rights grounds. The appellant before the First-tier Tribunal, Mr Miran Abdul Karim Faraj, is hereinafter referred to as "the claimant".

2. The claimant is a national of Iraq. He is a Sunni Muslim of Kurdish ethnicity. He originates from the vicinity of Kirkuk. He claims to have left Iraq because of a fear of a Shia militia, which targeted his family

and sought to seize his family's land. In 2012 his uncle was killed by this militia and the claimant has no surviving male relatives.

3. Permission to appeal was granted on the basis that the Judge of the First-tier Tribunal arguably erred by not giving adequate reasons to support the findings on credibility, risk on return and internal relocation.

4. It was contended in the application for permission to appeal that the judge failed to identify a reason recognised by the Refugee Convention for the claimant's fear. It is pointed out in the grant of permission, however, that at paragraph 11 of the decision the judge specified the Convention reason as a fear by the claimant as a Sunni Muslim of Shia Muslims who were using threats to force the claimant and his family to vacate their land and leave their village. Mrs O'Brien rightly acknowledged this was a fear based on ethnicity, or race, but it might also be characterised as a fear based on religion.

Submissions

5. At the hearing before me, Mr Chaudry began by raising two preliminary issues. The first of these was that new evidence in the form of country information was lodged with the application for permission to appeal but no application was made under rule 15(2A) in respect of the new evidence. In response Mrs O'Brien observed that the new evidence comprised published documents. She would not, however, seek to rely on this new evidence before the question of whether the First-tier Tribunal erred in law was decided. I consider that Mrs O'Brien's approach was the proper one in these circumstances.

6. The second issue raised by Mr Chaudry arose from paragraphs 14-15 of the application for permission to appeal. Here it was contended that the Judge of the First-tier Tribunal had been asked to depart from the relevant country guideline cases, in particular because the situation in Kirkuk province no longer met the threshold for a real risk of serious harm in terms of Article 15(c), but instead the judge made an unsubstantiated and inadequately reasoned finding to allow the appeal on asylum grounds. Mr Chaudry submitted that at the hearing before the First-tier Tribunal it was not argued on behalf of the Secretary of State that the judge should depart from the country guidance on the application of Article 15(c). It was accepted that the outcome of the appeal depended upon credibility.

7. In response Mrs O'Brien stated that she did not have the Presenting Officer's note of the hearing. The Presenting Officer was Mr Wright, not Mr Mullen as erroneously recorded in the decision.

8. I note that the Presenting Officer's submission at the hearing before the First-tier Tribunal was recorded by the judge at paragraph 7 of his decision. At paragraph 7(g), in particular, the Presenting Officer is recorded as relying upon the country guideline decision in AAH (Iraqi

Kurds – internal relocation) Iraq CG [2018] UKUT 00212. There is no suggestion that the Judge of the First-tier Tribunal was asked to depart from the country guidance.

9. I asked Mr Chaudry for his response to a point raised in the first paragraph of the application for permission to appeal, where it is contended that the judge failed to resolve an apparent conflict in the claimant's evidence over whether he feared Kurdish Peshmergas or the Shia militia known as Al-Shabi. According to the respondent these organisations were enemies and would not have colluded to force the claimant off his farm, although the judge appeared to have recorded at paragraph 6(e) that this was the appellant's evidence at the hearing.

10. Mr Chaudry responded that the claimant's evidence had always been that it was the Shia militia he feared, as set out at paragraph 10 of the witness statement. The reference by the judge in paragraph 6(e) to the appellant having been accused of killing a man who was a Peshmerga was an error by the judge and did not originate from anything said by the appellant.

11. For the Secretary of State Mrs O'Brien relied on grounds of the application for permission to appeal, subject to acknowledging that the judge did not err by failing to specify a Convention reason for the claimant's fear of persecution.

Discussion

12. Starting with the first ground of the application for permission to appeal, it is alleged that the judge did not make clear findings and give adequate reasons for finding that the claimant has a well-founded fear of persecution. In this regard I have accepted that the judge specified the claimant's fear as a Sunni Kurd was of Shia Muslims. I also accept the submission by Mr Chaudry, who was present at the hearing before the First-tier Tribunal, that the reference in the decision to Peshmerga was an accidental lapse by the judge and was not part of the claimant's evidence. The judge accepted that there were certain discrepancies in the claimant's evidence, as identified in the first ground of the application, but nevertheless was entitled to find for the reasons given that the claimant had a genuine fear of persecution.

13. The second ground concerned broadly whether the judge erred in finding that the claimant would be unable to obtain a CSID. The Secretary of State contends that the judge did not adequately consider whether the claimant might obtain a CSID from the Iraqi Embassy or from the relevant authorities in his home Governorate, or whether he could return to the IKR without a CSID.

14. Here it is important to note that, having particular regard to the expert evidence provided by Dr Fatah, the judge accepted that the claimant is at risk of persecution in his home area and would not

have adequate protection there. In response to a submission for the Secretary of State, the judge accepted that it was strange that the claimant should have left his CSID card at home but accepted nevertheless that the claimant's evidence was broadly credible. The judge accepted Dr Fatah's evidence that the claimant did not have the documentation required to obtain a CSID from the Iraqi Embassy. The claimant has no surviving male relatives who could assist him in obtaining a CSID in Iraq. The possibility of returning to IKR is considered in the succeeding paragraph.

15. The third ground of the application was a challenge to the judge's findings on internal relocation. The main findings by the judge in relation to this are set out at paragraphs 16 and 17 of the decision. The judge found that it would be unduly harsh to expect the claimant to relocate to IKR and this finding is supported by appropriate reasons. The judge also gave adequate reasons, relying on the country guidance, for finding that relocation without a CSID to any other part of Iraq, including Baghdad, would also be unduly harsh.

16. It is contended in the fourth ground that the judge did not have regard to the relevant country guidance on internal relocation and that the security situation in Iraq has improved. It is clear from the judge's decision that he sought to follow the case law in AA (Iraq) [2017] EWCA Civ 944 and AAH. The suggestion that he did not amounts to no more than a disagreement with the application by the judge of the country guidance to the claimant's particular circumstances. In following the country guidance cases the judge did not err in law.

17. It has already been observed that there is no indication that at the hearing before the First-tier Tribunal the judge was asked on behalf of the Secretary of State to depart from the country guidance. The Presenting Officer's submission, as recorded by the judge, indicates specific reliance by both parties on AAH. It is not an error of law not to consider an argument which is not advanced, particularly when that argument is of the degree of importance as departing from country guidance. Overall the contentions expressed in the application for permission to appeal amount to little more than a disagreement with the judge's findings. These findings were based on the evidence and submissions before the Judge of the First-tier Tribunal. Based on these the judge made findings which were open to him and which were supported by valid and adequate reasoning. The judge did not make an error of law in reaching his decision.

Conclusions

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

19. The decision of the First-tier Tribunal allowing the appeal shall stand.

Anonymity

The First-tier Tribunal did not make n anonymity direction. I have not been asked to make such a direction and I see no reason of substance for doing so.

M E Deans 15th April 2019
Deputy Judge of the Upper Tribunal