Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07178/2018

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 25 January 2019	**On 7 May 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

[M K]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms V Dirie, Counsel, instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant. born in May 2001 is a national of Iraq of Kurdish origin, who arrived in the UK in May 2017 and claimed asylum shortly after. He claimed that his father had been killed because he used to be a member of the Ba'ath Party. His mother and sister had also been killed. Members of the government also looked for him. He also claimed that he feared returning to Iraq because ISIS had invaded his village. On 23 April 2018

the respondent refused to grant him asylum and humanitarian protection; although granting him leave to remain until 1 November 2018. In a decision sent on 3 September 2018 Judge Barrowclough of the First-tier Tribunal (FtT) dismissed his appeal on asylum, humanitarian and human rights grounds. The judge concluded at paragraph 32 that the core of his account of having experienced serious harm in Iraq was not credible.

2. The appellant's grounds contend first of all that the judge erred in reaching adverse credibility grounds without considering the objective country evidence. I consider this ground of challenge unsustainable. Although the judge did not refer specifically to any country background material when setting out his reasons, he did identify the parties' bundles at paragraph 2, which included such material and also referred to the UT country guidance case of **AAH [**2017] UKUT 000182 which, *inter alia*, contains an extensive analysis of such material up to that date. The representative's submissions clearly made reference to materials in the bundles. There is no good basis for considering that the judge did not have this evidence fully in mind.

3. The appellant's second ground contends that the judge failed to properly consider the appellant's circumstances under Article 15(c) of the Qualification Directive and did not properly address the issue of whether the appellant's home area was still a contested area or whether he would be able to return via Baghdad or relocate within the IKR. It was said that there was a lack of clarity about whether the appellant would be able to obtain all the documentation he would need to return, including a CSID.

4. Taken on its own, I do not consider ground (2) is made out. Although the respondent did state in the reasons for refusal letter that Kirkuk was a contested area (paragraph 90), he had also said in paragraph 79 that internal relocation was possible in "the parts of Kirkuk governorate in and around Hawija". It was the appellant's own account that he and his family lived in villages (Kubayba and Mama) that were close to Hawija. Hence the judge did not err in considering that the appellant could not succeed in his asylum and humanitarian protection or Article 3 claim unless able to show that he would be at risk in his home villages. Nevertheless, given that it was the appellant's own evidence that ISIS had occupied his village in 2014, the judge should have confirmed whether or not he considered that they had now no presence there and were not part of a contested area.

5. In relation to the judge's treatment of the issue of the appellant's documentation, there is a difficulty in regard to what was stated at paragraph 30.

> "30. There is the anomaly, pointed out by Ms Williams, that whereas the appellant felt able to walk more or less freely in the villages of Mama and Haweja up until 2014, he did not venture out of Mohammed's property in the city of Kirkuk for the following two years. Additionally, the appellant says that he does not think that

> he would be able to recognise Mohammed, who he last saw only two years ago in 2016, that he does not think that Mohammed would be willing to help him if he was returned to Iraq, and that he has not tried to trace him through the Red Cross. I find that to be surprising, since on the appellant's account, Mohammed is the person who effectively saved, housed and protected him following the death or disappearance of all members of his family, and who arranged and presumably paid for his flight from Iraq to safety. I agree with Ms Williams that it is remarkable that agents should have been arranged to take the appellant not simply out of Iraq and away from the dangers that he apparently faced there, but all the way across Europe to the UK, at no doubt considerable extra expense. Finally, there is a significant inconsistency in the appellant's account about the identity documents that he brought out of Iraq – whether he knew that they were, whether he even opened the folder in which they were kept to look at them, whether he could read and understand what they were, partially or at all. It seems to me highly probable that the purpose and importance of any such document would have been explained to him before he left Iraq, and I found the appellant's evidence in re-examination concerning this issue to be unconvincing."

6. The difficulty with this assessment is that it really just establishes that the judge did not believe the appellant's account that he had lost contact with family and friends or that he would be unable to re-establish such contact. That may have sufficed if the appellant had been an adult, but since he was still a minor it was necessary for the judge to explain the basis on which he considered the appellant could obtain a CSID.

7. This difficulty takes on greater force when one turns to consider the judge's decision in the light of the appellant's third ground of appeal, whose essence is that the judge failed to consider the issue of risk on return on the hypothesis that the appellant would be returned at the date of the appeal hearing. Plainly the judge did fall into error in this regard.

8. The judge refers throughout to the appellant being returned to Iraq after his 18th birthday: see paragraphs 26 and 31. Mr Howells said he accepted that this was a serious error on the part of the judge.

9. In light of the foregoing, it is unnecessary for me to address ground 4.

10. I am persuaded that the judge's failure to assess the appellant's case on the basis of a hypothetical return whilst he was still a minor and his failure to make specific findings on how he concluded the appellant would be able to obtain a CSID, resulted in a material error of law necessitating that I set aside the decision.

11. There is a cursory challenge in the grounds to the judge's adverse credibility grounds, it being alleged at paragraph 18 that the judge's error regarding ex nunc assessment "brings into question whether … the credibility assessment was effectively informed by UNHCR and Home Office guidance and policy on considering children's asylum claims", but I

do not consider that this allegation is made out. First the judge expressly noted the appellant's status as a child when considering the significance of inconsistencies (see paragraph 31); and, second, this ground is wholly unparticularised and contains no explanation for why it was thought the judge would have come to a difficult conclusion if he had applied a more child-sensitive approach.

Direction

12. The above conclusion has consequences for the scope of the direction that I now give the next FtT judge who will have the task of rehearing the appeal. I direct that the next Tribunal takes as its starting point that the appellant's account of his past experiences is not credible and that all can be accepted about him is that he is an ethnic Kurd from the villages close to Hawija. Clearly the focus of the next hearing must therefore be on whether on the basis of the up-to-date country information his home area is safe (if it is found not, then there will need to be an assessment of whether the appellant can safely and reasonably relocate to Kirkuk or the IKR or other areas). If his home area is considered safe and reasonable for him to return to, then there will need to be specific findings on whether it is considered reasonably likely that he will be able to obtain an appropriate CSID with help from family or friends. Whilst it is appropriate for the appellant to give further oral evidence about this issue, its scope must be confined to this issue.

13. For the above reasons:

    The decision of the FtT judge is set aside for material error of law.

    The case is remitted to the FtT (not before Judge Barrowclough) with a direction set out at para 12 above.

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 Date: 15 February 2019

H H Storey

Dr H H Storey

Judge of the Upper Tribunal