



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08779/2018

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 21 December 2018

Decision & Reasons Promulgated  
On 18 February 2019

Before

**UPPER TRIBUNAL JUDGE HEMINGWAY**

Between

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

Appellant

and

**ZHA**

**(ANONYMITY DIRECTED)**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)  
For the Respondent: Ms Hashmi (Counsel)

**DECISION AND REASONS**

1. In this short decision I shall explain why I have decided to allow the Secretary of State's appeal to the Upper Tribunal; to set aside the decision of the First-tier Tribunal (the tribunal) and to remit to the First-tier Tribunal for a complete rehearing of the appeal.

2. The respondent in this appeal to the Upper Tribunal ("the claimant") is a national of Iraq. He was born on 1 January 1996. He is of Kurdish ethnicity. He entered the United Kingdom (UK) on 9 January 2018 (unlawfully) and claimed asylum on that day. In pursuing his claim he said that he is from Kirkuk in Iraq; that he had been harassed by Shia Muslims in Iraq because he is a Sunni Muslim; that he had been ill-treated and would be further ill-treated upon return because his father had been involved with the Ba'ath Party; and that his brother had been killed as a consequence of his father's involvement in the Ba'ath Party.

3. The Secretary of State accepted that the claimant is Iraqi, that he is of Kurdish ethnicity and that he is a Sunni Muslim. But the Secretary of State did not believe that his father had been involved with the Ba'ath Party or that the claimant had been ill-treated whilst in Iraq. It follows that the Secretary of State also disbelieved the contention that the claimant's brother had been killed in consequence of the claimant's father's claimed involvement with the Ba'ath Party. The Secretary of State also seems to have taken the view that the claimant would not be at risk of indiscriminate violence if returned to Kirkuk such that the test contained in Article 15(c) of the Qualification Directive was not met. But anyway, the Secretary of State thought, if it should be necessary, that he would be able to relocate to Baghdad or to the part of Iraq under Kurdish administrative control which is sometimes referred to and will henceforth be referred to throughout the rest of this decision as "the IKR". So, the Secretary of State refused to grant the claimant international protection. Dissatisfied, he appealed to the tribunal.

4. The tribunal held an oral hearing of the appeal on 5 September 2018. It sent its reasoned decision to the parties on 18 September 2018. Like the Secretary of State, it did not accept the claimant's account of his father's involvement with the Ba'ath Party or any consequent risk resulting from it. But it accepted that his home area was Kirkuk and that "Kirkuk remains in a contested area of Iraq". It seems to have accepted, therefore, that there would be an Article 15(c) risk if he were to return there (see paragraph 46 of the written reasons). It then considered whether he might be able to relocate within Iraq. A key consideration as to that was the question of whether he possessed or could obtain identity documentation but, in particular, what is known as a CSID card. At paragraph 47 of its written reasons there appears this sentence:

"I conclude that he has the ability to contact his father who is likely to have access to his identity documents including his CSID."

5. Then, at paragraph 48, the tribunal expressly considered the question of whether the claimant might be able to relocate to the IKR. It listed a number of possible relevant considerations before closing that paragraph with these words:

"... I note that AAH had the advantage of a semi-skilled background and a CSID which were the factors distinguished in his case as making it possible for him to secure employment. This is not true of the appellant and I accept therefore that it is unreasonable for the appellant to relocate to the IKR."

6. So, the tribunal allowed the claimant's appeal. But permission to appeal to the Upper Tribunal was sought and obtained. One of the grounds advanced was that what the tribunal had said at paragraph 47 was to the effect that he could obtain a CSID and that such was inconsistent with what it had said at paragraph 48. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law and, if so, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. Mr Diwnycz simply relied upon what had been said in the written grounds. Ms Hashmi argued that matters were not as straightforward as they appeared to be and that taking an overall view and having regard to relevant Country Guidance decisions (in particular *AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)*) the claimant would not be able to relocate to the IKR.

7. As I informed the parties at the hearing, I have decided that the tribunal did err in law such that its decision has to be set aside. At paragraph 47 of its written reasons the tribunal did make a finding that the claimant was in touch with his father or had the ability to contact him, and that his

father would have access to his identity documents including his CSID. So, on any view and despite anything Ms Hashmi was seeking to argue to the contrary, it was effectively deciding that the claimant would be able to access his CSID. However, at paragraph 48, it appeared to be proceeding on the basis that he would not be able to do so and it relied upon his inability to do so with the knock-on effect of the difficulties it would cause him in securing employment, as a reason of substance as to why he would not be able to relocate to the IKR. So, in short, having made a finding of importance it then lost sight of that finding when reaching its conclusion as to internal flight. That does, I am afraid, despite the fact that this is otherwise a characteristically most careful decision, render the tribunal's conclusion on the appeal unsafe.

8. My having decided to set aside the tribunal's decision there was some further discussion as to whether I should preserve certain of the findings, whether I should seek to remake the decision myself in the Upper Tribunal or whether I should remit to the First-tier Tribunal. Ms Hashmi urged me to remit. Mr Diwnycz initially invited me to remake the decision myself after a further hearing in the Upper Tribunal but, by the end of the discussion, had taken a more neutral stance.

9. I have decided to remit because Mr Diwnycz did not end up opposing that course of action, because the lack of clarity regarding the claimant's access to a CSID card will necessitate further findings of fact and because if there has to be a further hearing (and both representatives thought there should be) that might as well be before the First-tier Tribunal as the expert fact-finding body.

10. So, I direct that there be a full rehearing of the appeal. That will take place in the First-tier Tribunal before a different Judge to the one who dealt with and allowed the appeal. Nothing shall be preserved from the tribunal's original decision. I appreciate there might have been an argument for preserving the findings regarding the father's claimed involvement with the Ba'ath Party but if I am remitting it seems to me sensible to provide the First-tier Tribunal with a blank canvas rather than to attempt to restrict its expert fact-finding function. I make no more directions than that with respect to the rehearing. No doubt the First-tier Tribunal will prefer to attend to the need for listing directions itself in due course. Such will, of course, cover matters such as interpretation needs and a time estimate.

11. Finally, as to anonymity, such was granted by the tribunal. I have decided to maintain the status quo. The claimant, therefore, continues to benefit from a grant of anonymity.

## **Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted and will be reheard afresh by a differently constituted First-tier Tribunal.

The claimant was granted anonymity by the First-tier Tribunal. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall directly or indirectly identify the claimant or any member of his family. This direction applies to all parties to this appeal. Failure to comply could lead to contempt of court proceedings.

Signed:

Date: 28 December 2018

Upper Tribunal Judge Hemingway