



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08844/2018**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> November 2019**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> November 2019**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

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

Appellant

**and**

**ER**

(ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr A Burrett, Counsel, instructed by B.H.T Immigration Legal Services

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The claimant is a citizen of Iraq born in 2001. He arrived in the UK illegally in August 2017, and claimed asylum in September 2017. He was refused permission to remain on asylum grounds on 29<sup>th</sup> June 2018 but granted discretionary leave as an unaccompanied child until 1<sup>st</sup> July 2018. His appeal against the decision refusing refugee status and humanitarian protection was allowed by First-tier Tribunal Judge O'Keefe in a determination promulgated on the 6<sup>th</sup> September 2019.

2. Permission to appeal was granted to the Secretary of State by Designated First-tier Tribunal Judge MacDonald on 1<sup>st</sup> October 2019 on the basis that it was arguable that the First-tier judge had erred in law as the First-tier Tribunal had arguably made contradictory findings that firstly the claimant was at real risk of serious harm but secondly that his father's role would not put him at risk on return to Iraq now. It was also unclear whether the appeal was allowed under humanitarian protection grounds or asylum grounds.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. In the grounds of appeal the Secretary of State argues that the First-tier Tribunal has conflated asylum and humanitarian protection issues, and been ambiguous as to the outcome granting the appeal on both grounds. It is not possible for the appeal to be rationally allowed under the Refugee Convention because of the findings at paragraphs 46 to 49 that the appellant would not be at persecutory risk due to his father, and due to the lack of reasoning as to why he would be at general risk.
5. In a Rule 24 response the claimant responds, in summary, as follows. It is argued that the appeal was allowed under the Refugee Convention by the First-tier Tribunal. It is argued that this is clearly the case for the following reasons. It is argued that the Secretary of State conceded that the claimant had been recruited and trained by Daesh/ISIL and that the claimant could not go back to his home area of Hawija, see paragraphs 9, 30 and 31 of the decision. It is argued that the First-tier Tribunal found that the appellant would be at risk of serious harm on return because he was undocumented without family and so could be detained for a long period in Baghdad, and might be subjected to ill treatment in the IKR due to an inability to dispel suspicion that he was linked with ISIL, see paragraph 46 of the decision. It was found that he was in poor mental health, and at real risk of destitution without a CSID at paragraphs 49 and 50. It was found at paragraph 49 that it would be unduly harsh for him to have to relocate to the IKR, Baghdad or any other part of Iraq. As a result he was found at paragraph 51 to be a real risk of serious harm and to have a well-founded fear of persecution if returned to Iraq. In the alternative it was found in the same paragraph he would also be at risk under Article 15(c ) of the Qualification Directive.
6. It is argued that the finding at paragraph 33 of the decision that he was not at risk due to his father's Baathist profile was not relevant, as risk was conceded by the Secretary of State in the home area due to the appellant's own ISIL involvement. The claimant was found to be at real risk of persecution because of his own profile namely: he is a young man of fighting age; who had previously been resident in an area held by ISIL; he had been forced to train with ISIL; escaped from ISIL and been punished for disobeying them; he was currently without

documentation and family and mentally was not well enough to explain himself. The decision was properly made with direction with respect to the country guidance and consideration of all of the evidence.

### *Conclusions – Error of Law & Remaking*

7. The First-tier Tribunal properly directs itself to the correct standards of proof and tests for asylum, humanitarian protection and under the European Convention on Human Rights at paragraphs 26 to 28 of the decision.
8. The Secretary of State conceded risk in his home area as a result of the claimant having been recruited and trained by ISIL, but argued that he could return to the IKR. The First-tier Tribunal accepted the Secretary of State's submission that the claimant would not be at risk due to his father's membership of the Ba'ath party, although that membership was believed, see paragraph 33 of the decision.
9. The First-tier Tribunal then, having found that the claimant was at real risk of serious harm due to his own political profile in his home area, goes on to consider whether the appellant could reasonably relocate within Iraq at paragraphs 34 to 49. Firstly the judge examines the evidence and concludes that the appellant has no family support if returned to Iraq at paragraph 39; secondly she examines the evidence and concludes that the claimant does not have a CSID at paragraph 43 of the decision; thirdly she looks at the country guidance and concludes at paragraph 44 of the decision that the appellant would not be able to obtain a CSID within a reasonable period on return to Iraq; fourthly she looks at the claimant's mental health and concludes that return to Iraq would be deleterious to him and impact adversely on his PTSD; fifthly the First-tier Tribunal looks at whether the appellant could return to the IKR with reference to the guidance in AAH, the contention of the Secretary of State being that he could find safety there, but concludes on the totality of the evidence that it would be unduly harsh to expect him to relocate there or elsewhere in Iraq at paragraph 49 of the decision.
10. I find that it was therefore clear that the primary finding of the First-tier Tribunal at paragraph 51 was that the appellant was entitled to refugee status on the basis of his having a well founded fear of persecution in his home area based on his imputed political opinions as a result of his previously forced involvement with ISIL and the fact that internal relocation within Iraq would be unduly harsh.
11. I find that there are no errors of law in these findings.
12. The decision at paragraph 56 could have been clearer: it could and perhaps should have said the appeal is allowed under the Refugee Convention and on human rights grounds, instead of simply saying that "the appeal is allowed". I therefore remake the appeal substituting this clarified outcome.

Decision:

13. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law beyond the clarification that I identify at paragraph 12 of my decision.
14. I uphold the decision of the First-tier Tribunal allowing the appeal on asylum and human rights grounds.

**Anonymity**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley  
2019  
Upper Tribunal Judge Lindsley

Date: 12<sup>th</sup> November