



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09765/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 11 July 2019

Decision & Reasons Promulgated
On 16 September 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RSH

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1991 is a male citizen of Iraq. The appellant entered the United Kingdom in 2008. His claim for asylum was refused and a subsequent appeal dismissed in August 2010. He became appeal rights exhausted on 8 October 2010. On 31 August 2011, the appellant was granted three years discretionary leave to remain on Article 8 grounds. On 28 July 2015, the appellant was convicted of wounding/inflicting grievous bodily harm and was sentenced to 2 years imprisonment. The respondent issued a notice of

intention to make deportation order on 26 September 2016. On 24 July 2018, the respondent refused the appellant's protection and human rights claims. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 8 April 2019, allowed the appeal on Article 3 and Article 8 ECHR grounds. The asylum appeal was dismissed as was the appeal seeking humanitarian protection (on the basis that the appellant had committed a serious crime: paragraph 339D(iv)). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant was not represented before the Upper Tribunal. I therefore invited the presenting officer, Mr Mills, to make his submissions first. I told the appellant that he would speak last in response to Mr Mills and that he should tell me anything else which he considered relevant in the appeal.
3. Mr Mills submitted that the judge should not have followed existing country guidance of *AA (Iraq)* [2017] EWCA Civ 944 but should have analysed in greater detail the recent evidence adduced by the Secretary of State which purports to show that Kirkuk, the appellant's home area of Iraq, is no longer in the possession of ISIS and that it would be safe for him to return there in order to obtain a replacement CSID. Moreover, the appellant's mother continues to live in Kirkuk and the judge had failed to give reasons why the appellant could not contact her to ask for assistance or to reside with her whilst he obtains his new documents.
4. The judge had addressed the submission made by the presenting officer that she should depart from the country guidance of *AA (Iraq)*. Her analysis and response to those submissions appears at [60-70]. At [71], judge observed that the appellant would be returned to Baghdad. He would not be able to board a domestic flight to the IKR without a passport or CSID and it would not be safe for him to travel by land to the IKR (or, by extension, Kirkuk) as male Kurd who cannot speak Arabic without possessing the appropriate documents.
5. Although Mr Mills' submissions were advanced with his customary skill, I do not find that the judge has fallen into legal error. Her analysis is exhaustive and thorough and she is given reasons finding that *AA (Iraq)* had not been displaced by more recent evidence put forward by the Secretary of State. I do not consider any part of her analysis to be wanting or that she has, as asserted in the grounds, failed to address criticisms of the existing country guidance advanced by the respondent.
6. The grounds also attack the judge's conclusions on the Article 8 ECHR appeal. Here, Mr Mills told me that he was unable to say 'that there was nothing' in the family circumstances as found by the judge to justify a grant of leave on Article 8 ECHR grounds. I agree. The judge has explained in some detail the vital role played by the appellant in the lives of his young children (age 15 and 10 years respectively) and the very considerable difficulties which his partner would encounter having to bring up children and maintain the household without the assistance of the appellant. The judge has applied the appropriate test of undue harshness and I find that, on the particular facts, it was open to the judge to conclude that the effects of the appellant's deportation upon his partner and children (the oldest in particular in need of his

father's guidance at a time when he appears to have become involved in criminality) would be unduly harsh. Although a different outcome on the same facts may have been possible, in this instance I am not prepared to interfere with the judge's conclusion.

7. For the reasons I have given above, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed

Date 2 September 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.