



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11142/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 16th May 2019**

**Decision & Reasons Promulgated
On 20th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR OMID [H]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Woodhouse (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DETERMINATION AND REASONS

This is an appeal against the determination of First-tier Tribunal Judge James, promulgated on 20th March 2018, following a hearing at Birmingham on 9th January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant's Claim

The essence of the Appellant's claim is that there had been on 3rd November 2015, a bombing in Dubz and that his employer and two co-workers had been arrested in connection with it. He claimed that the Iraqi authorities were pursuing him because they believed he was connected with the bombing due to his association with his co-workers. He claimed that on return to either Iraq or Kurdistan he would be detained and tortured.

The Appellant is a male, a national of Iraq, and was born on 1st January 1997. He appealed against the decision of the Respondent dated 30th September 2016 refusing his claim for asylum and humanitarian protection.

At the hearing before me on 16th May 2019, there was agreement between Ms H Aboni, and Mr Woodhouse, that given that the Appellant's claim was that he came from the Diyala region of Iraq, which according to the country guidance case of **AA (Iraq) [2017]** was a "contested area", the judge ought not to have come to a different conclusion, namely, that the Appellant was returnable to Diyala because the judicial review case of **Amin [2017] EWHC 2417**, provided a basis for this.

This was particularly, given that the judge had before him an Appellant's expert report, which was in the bundle of documents (referred to at paragraph 9 of the determination), but to which the judge made absolutely no reference whatsoever, and still less undertook an analysis of the expert report, before concluding that Diyala was a region to which the Appellant could be returned.

If the judge were, as encouraged by the Respondent authority, to place reliance upon the Home Office's CPIN report, to the effect that Diyala was now not a contested area, then, given that there was a country guidance case to the contrary in **AA (Iraq) [2017] EWCA Civ 944**, it behoved the judge to consider what the expert had to say on the Appellant's behalf in this regard as well, before concluding in favour of the Home Office.

This, suggested Ms Aboni, indicates that the judge had not exercised "anxious scrutiny" in relation to the appeal before him.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside. I set aside the decision of the regional judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge James, pursuant to practice statement 7.2(b).

No anonymity order is made.

This appeal is allowed.

Signed
Deputy Upper Tribunal Judge Juss

Date
17th June 2019