Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11959/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 5 April 2019	**On 15 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

F A S
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Anthony promulgated on 27 December 2018, which dismissed the Appellant's appeal.

Background

3. The Appellant is an Iraqi national who was born on 01 January 1982. The appellant entered the UK on 14 February 2005. He claimed asylum, and that application for asylum was refused by the respondent on 4 April 2005. The appellant appealed, and his appeal was dismissed in a determination promulgated on 20 May 2005. On 29 August 2018 the appellant made further representations which the respondent considered as a fresh claim. The respondent refused that renewed protection claim on 28 September 2018.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Anthony ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 17 January 2017 Judge Grant-Hutchison granted permission to appeal stating *inter alia*

> 2. It is arguable that the Judge has misdirected herself by failing to (a) clarify whether she was departing from the whole was only partial aspects of the country guidance case of AAH (Iraqi Kurds -internal relocation) CG [2018] UKUT 212 (IAC) in coming to her decision and (b) make any findings on the evidence of the first witness which could have made a material difference to the Judge's decision with particular reference to the appellant's private life in the UK and the threat to his moral and physical integrity in Iraq.

The Hearing

6. The appellant was unrepresented. English is not his first language. He was accompanied by a friend, Rebin Sabir. Lifeline options CIC had previously represented the appellant but on 1 April 2019 to explain that they would not be attended that hearing - the author of the letter explained that he was not qualified to represent the appellant - however written submissions were advanced.

7. I spoke to Mr Walker, who represents the respondent. I suggested to Mr Walker the it may be argued that [21] of the decision is not adequately reasoned, and that the Judge's decision not to follow extant country guidance caselaw at [18] is inadequately reasoned.

8. Mr Walker agreed that both [18] and [21] of the decision contain material errors of law. He said that he would not resist the grounds of appeal.

Analysis.

9. The appellant is an Iraqi Kurd. He arrived in the UK on 14th February 2005. He claimed asylum unsuccessfully. He appealed against the refusal of asylum and in a determination promulgated on 22 May 2005 his appeal was dismissed. His appeal rights were exhausted in September 2005. The appellant made a fresh claim on 29 August 2018 which was refused by the respondent on 28 September 2018. It is against that refusal of the appellant appeals.

10. At [12] of the decision the Judge tries to decide where the appellant comes from so that she can determine where he will be returned to. The Judge finds that the appellant was born in Kirkuk, but last lived in Sulaymaniyah. The Judge's findings are reinforced by the principles in Devaseelan [2002] UKAIT 000702. The Judge applies the same principles to find, at [15], that the appellant's asylum claim cannot succeed.

11. Between [17] and [23] the Judge combines consideration of entitlement to humanitarian protection and articles 2 and 3 ECHR grounds of appeal. At [18] the Judge does not give adequate reasons for accepting the submission that AAH (Iraqi Kurds -internal relocation) should not be followed. In R and Others v SSHD (2005) EWCA civ 982 the Court of Appeal endorsed Practice Direction 18.4 which states that any failure to follow a clear, apparently applicable, country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal said that it represented a failure to take a material matter into account.

12. At [21] the Judge does not give adequate reasons for finding that the appellant can fly directly into Sulaymaniyah international airport. At [18] the Judge refers to evidence and submissions which is not properly analysed. The Judge does not explain why she places weight on certain evidence nor does she explain how she reaches the conclusion that return will be direct to Sulaymaniyah when the country guidance caselaw says that return is via Baghdad.

13. In KO (Iraq) v SSHD [2018] CSOH 71 the Court of Session reduced the SSHD's decision to refuse to treat further Article 8 submissions as a fresh Article 8 claim. When considering paragraph 276ADE the SSHD had failed to take into account the relevant CPIN indicating the "dire" humanitarian situation in the KRG in circumstances where the petitioner was unlikely to be able to obtain any employment as he was not fully medically fit and had been unemployed for years. The decision letter had only considered positive features about reintegration but had made no attempt to consider

the very real obstacles to integration which existed - in particular personal problems for the petitioner in a situation which appeared very problematic even for an able-bodied adult with employment skills.

14. The Judge's decision relies strongly on a finding that international air routes into IKR have opened up and gives no consideration to the ability of the appellant to enter IKR nor the circumstances the appellant will find in IKR. At [13] the Judge finds that the appellant was born in Kirkuk but has lived in Sulaymaniyah since he was a primary school age child. The Judge goes on to treat Sulaymaniyah as the appellant's Home area. AAH says that the place of birth is crucial to recovering a CSID, and that the place of birth defines a "home area". Case law says that Kirkuk is an area of internal armed conflict. The Judge's findings focus on Sulaymaniyah; her conclusions that it is to there that the appellant will return are unsafe. At [15] the Judge relies heavily on the 2005 determination, and says there has been no change since then, even when deciding the location of the appellant's home area. That finding is unsafe in light of the guidance given in AAH.

15. The Judge's article 8 proportionality exercise is found between [24] and [30]. The Judge restricts her proportionality assessment to consideration of s.117B of the 2002 Act. The Judge carries out no analysis of the evidence of private life advanced by the appellant. It is not enough to say (at [30])

> There is no reason why I should consider any private life rights….

The Judge's proportionality assessment is inadequate.

16. These are material errors of law; the errors fundamentally undermine consideration of the qualification directive and articles 2, 3 & 8 ECHR grounds of appeal. Because the decision is tainted by errors of law, I set the decision aside.

17. I consider whether or not I can substitute my own decision. There is an inadequacy of fact finding in the First-tier's decision. I find that none of the First-tier Judge's findings of fact can be preserved. I am asked to remit this case the First-tier Tribunal. The material error of law in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. A further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

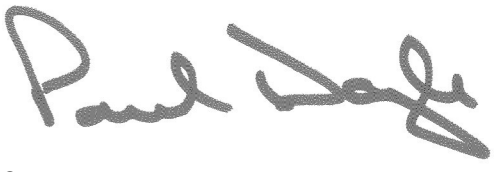
> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

20. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard be dge Anthony.

Decisio



21. The al is tainted by material errors o

22. I set aside the Judge's decision promulgated on 27 December 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Date 11 April 2019

Deputy Upper Tribunal Judge Doyle