Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13668/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 August 2019	**On 13 September 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AKI
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Jones, counsel instructed by Sutovic & Hartigan
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Chana, promulgated on 11 February 2019. Permission to appeal was granted by Deputy Upper Tribunal Judge Latter on 25 July 2019.

Anonymity

2. No such direction has been made previously, however one is set out below because this is a protection matter.

Background

3. The appellant arrived in the United Kingdom on 2 July 2007 and applied for asylum the following day. That claim was refused on 2 August 2007 and the appellant's appeal against that decision was dismissed on 9 October 2007. He made three sets of further submissions, the last of which was refused in a decision dated 9 November 2018 and which is the subject of this appeal.

4. The appellant is a Kurdish Muslim from Kirkuk. The basis of his protection claim is that he fears persecution in Iraq both because of his father's links to the Ba'ath Party and because he is suspected of having individual links to terrorist groups such as ISIS and Al Qaeda. In refusing that claim, the Secretary of State referred to the appeal determination dated 9 October 2017, wherein the judge did not accept that the appellant's father was a member of the Ba'ath Party. In addition, the respondent referred to the refusal of the appellant's earlier submissions on 3 September 2015 when his claim that he was at risk in Iraq due to the general country situation was rejected with it being decided that he could be removed to Baghdad. The appellant was said to have provided no evidence to suggest that he had any imputed links to terrorist groups or why he would be seen to have such links. The Secretary of State did not accept that the appellant could not return to Kirkuk or that this would breach his rights under Article 15(c) of the Qualification Directive. The respondent stated that the appellant had failed to show that he had attempted to obtain a Civil Status Identity document (CSID) from the Iraqi embassy in the United Kingdom or provided evidence to suggest that he was not in possession of one. Alternatively, it was said that the appellant could return to either Baghdad or Kirkuk and obtain a CSID there. It was not accepted that he had no family support in Iraq.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge considered the sole issue to be the general country situation in Iraq, with reference to the case of *AA (Article 15(c)) Iraq [2015]* UKUT 00544 (IAC)/ *AA (Iraq)* [2017] EWCA Civ 944. The judge rejected the appellant's evidence as to his family circumstances in Iraq. She also departed from the Country Guidance case of *AA*, finding that the situation had moved on and Kirkuk was no longer a contested area. The judge found that the appellant could obtain a CSID from Kirkuk and relocate to Baghdad or the IKR.

The grounds of appeal

6. The grounds of appeal broadly made the following arguments;

- that the judge failed to follow the case law of *BA (Returns T Baghdad Iraq)* CG [2017] UKUT 18 (IAC) and *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 212 (IAC).

- the judge failed to apply anxious scrutiny to the claim evidenced by her failure to deal with the proposition that the appellant may be at risk of serious harm if returned to Baghdad as a young male Sunni returnee, *BA* applied.

- there was a failure by the judge to engage with the decision in *AAH.*
- The judge's findings regarding relocation to the IKR were unsustainable because this issue was not advanced by the respondent in the refusal letter
- The judge's findings regarding the CSID were made without reference to *AAH*
- The judge erred in relying on the respondent' evidence that Kirkuk was no longer a contested territory, contrary to *AA* and failed to indicate that she intended to rely on *Amin* [2017] EWHC 2417.
- The judge's findings were irrational and she misrecorded material aspects of the evidence
- The judge misdirected herself in finding that the appellant did not seek to rely on Article 8 ECHR or paragraph 276 of the Immigration Rules.

7. Permission to appeal was granted on all grounds.

8. The respondent filed no Rule 24 response.

The hearing

9. Mr Jones made the following arguments. The judge was addressed orally and in the skeleton argument about *BA* and therefore what she said at [29] was incorrect, in that she said the only issue was Article 15(c) with reference to AA. The argument had been made that there was a risk to the appellant at the point of reception in Iraq. The judge did not engage with BA and there was also a lack of findings regarding paragraph 276ADE of the Rules which was relevant given the evidence that the appellant's family were deceased and that Kirkuk was contested territory. There was no reference to or engagement with the background country evidence provided.

10. In relation to the third ground, it was argued that there were significant risks to the appellant *en route* to the IKR and this was just as pertinent on relocation from the capital to Kirkuk. There was no consideration of that issue and no reference to *AAH* at all in the decision.

11. The judge appeared to suggest the appellant had a CSID which was a speculative finding. In AAH it was said that a person must return to their place of origin whereas the respondent's evidence suggested that it is not know if there is an operative documentation centre in Kirkuk. In addition, the judge made no clear finding regarding on whether the appellant had a male relative to assist, albeit she speculated that his friend's family could do so.

12. The judge advocated the appellant's relocation to the IKR despite the Secretary of State not advocating that and no submission being made to that effect. The judge did not raise this matter in the hearing and she did not engage with *AAH* regarding whether there were any risks to the appellant. The judge criticised the appellant for not securing a document from the Iraqi authorities but did not consider that he

would need a passport, family records or a family member to vouch for him. The judge based her findings on the negative credibility findings of the previous judge, whereas not every aspect of his claim was rejected including what he said about his family. The judge speculated that the appellant possessed a CSID.

13. Regarding ground six, the judge failed to grapple with *AA* and failed to understand the basis of the case, which is that Kirkuk was a contested area because of volatility, that volatility persisted and ISIS still a feature of this. Instead the judge sought to rely on *Amin* and made no decisions on the issues before her.

14. For the respondent, Mr Walker conceded that the judge's failure to consider AAH was a material error of law. In addition, the judge had speculated regarding the appellant's family and there was a general lack of consideration of the evidence provided.

15. At the end of the hearing, I indicated that there were material errors of law in the judge's decision and that it would be set aside, with no findings preserved.

16. Mr Jones indicated that the appellant's preference would be for the appeal to be remitted to the First-tier Tribunal as there was not a fair hearing and no factual findings were to be retained. Owing to the outstanding Country Guidance case which included consideration of whether Kirkuk was a contested area, he requested that the matter be stayed in the First-tier Tribunal pending the outcome.

Decision on error of law

17. As both parties agreed, the judge's failure to follow an applicable country guidance case or show why it does not apply amounts to a material error of law. In this case, the judge neither referred to nor applied the Country Guidance cases of *BA* and *AAH*, despite the skeleton argument produced on behalf of the appellant clearly relying on both cases and supplying detailed argument regarding the relevance of those cases. The judge similarly failed to assess the appellant's Article 8 claim, both within and outside the Immigration Rules, despite it being flagged up that this aspect of the decision was challenged on the first page of the appellant's skeleton argument. The remainder of the points made in the grounds are also made out.

18. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his current protection, humanitarian and human rights' claims at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours, by any judge except First-tier Tribunal Judge Chana.

This matter is to be stayed pending the promulgation of the decision in the Country Guidance cases of SMO & Ors (PA/08722/2017) which was heard in June 2019.

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

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

Signed Date 06 September 2019

Upper Tribunal Judge Kamara