



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/09184/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 8 September 2020

On the 10 September 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr H Broachwalla, Burton & Burton Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I explained my decision but reserved my reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iraqi national of Kurdish ethnicity and Sunni Muslim faith with date of birth given as 22.9.92, has appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 24.12.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 11.9.19, to refuse his claim for international protection based on threats to his life because of his romantic relationship with a young woman of the Shia Muslim faith.
2. In directions issued on 6.5.20 the Upper Tribunal had originally proposed to determine the error of law issue on the papers without an oral hearing. There was no response to the directions from the respondent. However, the appellant objected to the issue being decided without a hearing. In the circumstances, on 16.7.20 the Upper Tribunal issued directions for the appeal would be held remotely.
3. In essence, the grounds submit that the First-tier Tribunal erred as follows:
  - a. Making irrational findings at [27] when stating that the appellant would have known early in his relationship that the young woman he was involved with was Shia and her brothers PMF. It is argued that this finding was not supported by any evidence or sound reasoning and arose from pure speculation;
  - b. Speculating at [29] when stating it was not believed "that two young people would be so foolhardy as to ignore their family wishes, ignore their family attitudes and ignore the likely outcome to all of them and still continue (the relationship) for so long as he claims," when the objective evidence demonstrates that extra-marital relationships do take place despite such danger. It is also argued that the judge failed to engage with the appellant's evidence;
  - c. Failing to consider the risks on return in line with AA (Iraq) v SSHD [2017] EWCA Civ 944 and AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC), finding at [34] that the appellant's home area was not a 'disputed area' and that he could return there from Baghdad, despite the fact that he had lived all his life in a 'contested area';
  - d. Stating at [34] that the case law in relation to obtaining a CSID was not relevant, when the importance of such a document or INID card is confirmed in the Country Guidance case of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC);
4. Permission to appeal was granted on all grounds by the First-tier Tribunal on 16.3.20, on the basis that it was considered arguable that the First-tier Tribunal Judge had erred in failing to provide adequate reasons for the findings made, including that at [27] of the decision. It was also considered arguable that at [29] of the decision

reliance was placed on the judge's opinion rather than findings of fact made on evidence put before the Tribunal.

5. I was advised that the respondent had submitted a Rule 24 reply, dated 28.5.20, which I have not received and is not in the Tribunal's case file. However, Mr Diwnycz explained that it was prepared by a colleague without access to the case papers and would not be helpful for the Tribunal to consider.
6. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
7. At the outset of the hearing I expressed concern with the judge's treatment of the CSID issue at [34] of the decision, where the judge stated that the case law in relation to obtaining a CSID was not relevant, as the appellant could return to his home area. Mr Diwnycz accepted that the appellant's home area was in what has been identified in the case law as a 'contested area'. Amongst other matters left unaddressed, the judge has not explained how the appellant would be able to travel from Baghdad to his home area without identity documentation. The decision does not address SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), which was promulgated after the First-tier Tribunal appeal hearing but a few days before its decision was promulgated.
8. In response, Mr Diwnycz took a sensible approach, conceding that the decision was "confused at best" in relation to location of return and identity documentation.
9. Taken in the context of the decision as a whole, I agree with the submissions of the appellant that the findings lack adequate reasoning. Mr Diwnycz did not resist the appeal on those grounds.
10. However, Mr Diwnycz did resist the first two grounds of appeal, on the basis that it was open to the judge to make the observations referred to. I take the view that the judge could easily have phrased the observations made as the appellant's account being implausible and/or not credible. In the light of the respondent's approach to the third and fourth grounds, Mr Broachwalla did not pursue the first two grounds.
11. In the circumstances, I do not accept that there was any error of law in respect of the first two grounds but find a material error of law in the third and fourth grounds. The identified errors are sufficiently material to require the decision to be set aside and remade de novo.
12. Mr Broachwalla submitted, and Mr Diwnycz did not demur, that as the findings regarding identity documentation and the location of the appellant's return would have to be remade, including consideration as to whether the appellant could obtain the necessary documents in the UK, there would need to be a full factual analysis, probably with further evidence, which is best done in the First-tier Tribunal. I agree.

13. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
14. In all the circumstances, at the invitation or consent of both parties. I relist this appeal for a fresh hearing in the First-tier Tribunal, on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

### **Decision**

The making of the decision of the First-tier Tribunal involved the making of an error of law.

The decision of the First-tier Tribunal is set aside.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Birmingham to be made afresh with no findings preserved.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 8 September 2020

### **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

*"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 his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 8 September 2020