



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

Appeal Number: PA/09220/2019 (P)

**THE IMMIGRATION ACTS**

**Decision under Rule 34  
Without a hearing, 29<sup>th</sup> May 2020**

**Decision & Reasons Promulgated  
On 2<sup>nd</sup> June 2020**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**HJJ  
(anonymity order made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS (P)**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as HJJ. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. FtT Judge O R Williams dismissed HJJ's appeal against the refusal of his international protection and human rights claim for reasons set out in a decision promulgated on 29<sup>th</sup> January 2020. He allowed the appeal on humanitarian protections grounds. Permission to appeal was granted by FtT judge Chohan on 10<sup>th</sup> March 2020. Directions for the further conduct of the appeal were sent on

28<sup>th</sup> April 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.

2. The appellant made no further submissions either with regard to the grounds upon which permission to appeal had been sought or on whether or not the issues could be decided on the papers; the respondent filed written submissions dated 14<sup>th</sup> May 2020 and expressed no strong view on the future conduct of the appeal. The respondent did not seek permission to appeal the findings of the FtT judge on humanitarian protection grounds. The appellant was, on the date of the making of this decision, aware of the respondent's position but has not chosen to respond. No application to extend time to respond to the respondent's submissions has been made. The respondent did not file a Rule 24 response.
3. I am satisfied that the submissions made on behalf of the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

#### FtT decision

4. The appellant, whose previous claim for international protection was refused and dismissed for reasons set out in a decision dated 26<sup>th</sup> January 2011, claimed protection on the grounds, in essence, that he sought humanitarian protection only, that he was unable to obtain a CSID card and had no one who was able to help him obtain one and that as a Kurd from Kirkuk he would be targeted as a Sunni Muslim Kurd if returned to Baghdad and he would be at risk in Kirkuk (as summarised in paragraphs 14-17 of the FtT decision).
5. The FtT Judge found, inter alia,
  - (a) The appellant is not in contact with his family, most probably because of the passage of time and the effect of fighting in the appellant's home area;
  - (b) It is reasonably likely the appellant's home area of Kirkuk is a contested region and a return there would constitute a breach of Article 15(c) Qualification Directive;
  - (c) There is no prospect of the appellant being issued with a CSID whilst he is in the UK and it is reasonably likely he will not be able to secure a CSID in Baghdad;
  - (d) The appellant is likely to face destitution, and this will amount to a breach of Article 3;
  - (e) It would be unduly harsh for the appellant to relocate to the IKR.
6. The FtT judge dismissed the appeal on refugee grounds, allowed the appeal under Article 15(c) Qualification Directive, stated the respondent's decision was not a breach of s6 Human Rights Act 1998 and stated the appellant will be at risk on return.

### Error of law

7. The appellant did not seek, in his grounds seeking permission to appeal, to challenge the FtT judge's summary of the basis of claim. Nor did he challenge the reference in the decision to the appellant not seeking protection under the Refugee Convention on the basis of "risk from the Obedi tribe and the claim was in relation to Humanitarian Protection only" ([15] FtT decision).
8. The appellant sought permission to appeal on two grounds:
  - (a) That although the appeal was determined on 29<sup>th</sup> January 2020, the FtT judge made no findings with respect to the CG case of *SMO (Article 15(c) identity documents) Iraq CG* [2019] UKUT 400 (IAC); that a pivotal question was whether the appellant would be able to obtain a CSID card; that the appellant's return to Iraq is subject to an assessment in line with the CG which the FtT judge failed to conduct.
  - (b) That the judge erred in law in failing to find in the appellant's favour re the credibility of his account merely because he did not accept the core of the claim; the issue of being documented ought to be considered under the correct Country Guidance.
9. Permission was granted on the basis that it was arguable that the FtT judge failed to consider extant CG but also notes that although the judge allowed the appeal on humanitarian protection grounds, he then went on to dismiss the appeal as a whole.
10. The respondent in her submissions notes that the appellant is not seeking permission to appeal the finding that the appeal was dismissed on refugee grounds and that the appeal has been allowed on humanitarian protection grounds. She states that given the lack of consideration by the FtT judge of *SMO* and that *SMO* may materially affect the position on obtaining a CSID, she accepts the FtT judge materially erred in law.
11. The respondent does not accept the FtT judge erred in his consideration of the credibility findings, submitting that the judge assessed the evidence and reached findings that were open to him.

### Discussion

12. The respondent has not sought permission to appeal the decision by the FtT allowing the appeal on humanitarian protection – Article 15(c) grounds.
13. It may be that in some way the appellant is seeking permission to challenge the dismissal of the appeal on refugee grounds. This is not however stated in terms. In any event the appellant conceded before the FtT judge that he could not succeed in his appeal on refugee grounds and he cannot therefore successfully pursue an appeal against the decision to dismiss his asylum-based appeal.
14. The final numbered paragraph of the FtT decision reads as follows:

“52. The respondent’s decision was not unlawful under section 6 of the Human Rights Act 1998. For the reasons stated above the appellant will be at risk on return.”

The judge goes on to state:

**“Notice of decision**

The appeal is dismissed”.

15. The position therefore is that:
  - (A) The appeal on humanitarian protection grounds (Article 15(c)) was allowed and there has been no challenge to that decision by the respondent.
  - (B) The appeal on refugee protection grounds was dismissed. Any purported appeal against that decision is dismissed; the appellant having conceded he was not pursuing his claim on refugee grounds.
  - (C) No grounds have been submitted by the appellant seeking to challenge the decision by the FtT that the decision was not unlawful under s6 Human Rights Act 1998.
16. The reference to credibility in the grounds seeking permission to appeal seems to be unrelated to a challenge to the final decision made by the judge. In any event the grounds do no more than set out some legal principles and assert that the appellant’s account was consistent. Consistency does not equate with credibility. The judge addressed the appellant’s evidence and addressed that evidence in the context of the previous asylum decision and reached findings, as stated by the respondent, that were plainly open to him. There is no error of law by the judge in the findings he reached as to the credibility of the appellant’s account as it related to his family, risk in the contested area, ability to obtain a CSID or internal relocation.
17. In granting permission to appeal, the judge stated that “the matter needs to be explored further”. It is unclear what is meant by that. The appellant has sought permission to appeal; the respondent has not. The grounds relied upon by the appellant are inadequately formulated and could not possibly succeed as a successful challenge to the findings of the judge on the decision on asylum grounds or s6.
18. I dismiss the appellant’s appeal.

**Conclusions:**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT allowing the appeal on Article 15(c) Qualification Directive grounds but dismissing the appeal on refugee grounds and s6 Human Rights Act 1998 stands.

*Anonymity*

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker

Upper Tribunal Judge Coker  
Date 29 May 2020