



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

Appeal Number: PA/09713/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 9 August 2020**

**Decision & Reasons Promulgated
On 13 August 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR K (IRAQ)
[ANONYMITY ORDER MADE]**

Respondent

DECISION AND DIRECTIONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of Mr K who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and directions

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The claimant is an Iraqi Kurd who is now 27 years old.
2. The appeal was heard on 14 November 2019 but the First-tier Judge's decision was not promulgated until 3 January 2020. The Upper Tribunal's latest Iraq country guidance case *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400 (IAC) (20 December 2019) but the judge did not invite further submissions thereon and disposed of the new country guidance in one line in her rather confused paragraph 38:

"38. In conclusion, I find that the appellant has not discharged the burden of proof to show with a reasonable degree of likelihood that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Geneva Convention. Therefore it follows that I must refuse his asylum appeal. However, I am satisfied that it is unreasonable to expect the appellant to return to Iraq and attempt to relocate back to his home area or to the ikr or Baghdad and other southern governorates. Given the guidance contained within the recent country guidance case of [*SMO and others*], I reach the conclusion that internal relocation is unduly harsh."
3. The judge dismissed the asylum appeal, but allowed the appeal on humanitarian protection and on Article 3 ECHR grounds.
4. The Secretary of State appealed to the Upper Tribunal, arguing that the First-tier Judge had erred in providing inadequate reasons for her decision, failing to take into account material facts, making mistakes of fact and/or failing to resolve conflicts of evidence, and that the Upper Tribunal should substitute a decision dismissing the appeal.
5. On 30 January 2020, Designated Judge Woodcraft granted the Secretary of State's application for permission to appeal on all grounds.
6. On 18 March 2020, immediately after the COVID-19 pandemic lockdown at Field House, Vice-President Ockelton reviewed the file and directed that the Secretary of State could file further submissions in support of the error of law issue, with a right of reply to the claimant, and time limits. The Secretary of State did nothing. On 21 April 2020, the claimant's solicitors filed a Rule 24 Reply out of time, engaging with the Secretary of State's grounds of appeal.
7. On 13 May 2020, Upper Tribunal Judge Kamara reached a provisional view that the appeal could be determined without a hearing and directed

that the Secretary of State **must** file submissions in support of her assertions of an error of law. Again, the Secretary of State did nothing.

8. That is the somewhat unsatisfactory situation in which this appeal comes to me for directions. I am satisfied, having regard to the submissions received from the appellant and the grounds for review, that the First-tier Judge ought to have asked for further submissions on *SMO and others* before reaching her decision, and should have explained in her decision why, if the appellant was not a refugee, internal relocation was engaged.
9. There is no alternative but to set this decision aside for remaking afresh in the First-tier Tribunal.

Decision

10. I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved.
11. The appeal will be remitted to the First-tier Tribunal for rehearing afresh before a different First-tier Judge.

Signed: [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 9 August 2020