



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

Appeal Number: PA/11878/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 21 January 2020**

**Decision & Reasons
Promulgated
On 30 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

H H

(ANONYMITY DIRECTION MADE)

Claimant

Representation:

For the Appellant: Mr A Tan, Senior Home Office Presenting Officer
For the Claimant: Mr S Ell, instructed by Lei Dat & Baig Solicitors

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. 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 claimant.

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Ennals promulgated on 1 November 2019, allowing, on humanitarian protection grounds, the claimant's appeal against the decision of the Secretary of State of 6 May 2019, rejecting his asylum and humanitarian protection claims in a deportation decision.
2. Designated Judge Woodcraft granted permission to appeal on 27 November 2019. Although at the end of Judge Woodcraft's reasons he states, "The grounds do not demonstrate any arguable error of law on the judge's part," I can only conclude that that was a typo on Judge Woodcraft's part and it is clear that the intention of Judge Woodcraft was to grant permission on the basis that the grounds were arguable that:

"The appellant's father who had obtained a CSID in the past could do so again for the appellant. It is arguable that the judge gave insufficient reasons why the appellant could not be assisted by family members to obtain the necessary documentation. All grounds may be argued."

Error of Law

3. For the reasons set out below I find there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside and remade in the First-tier Tribunal in accordance with the directions below.
4. Mr Tan relies on two overlapping issues: the findings in relation to the ability of the claimant to obtain a CSID either before or on return to Iraq, and the Article 3 findings set out at paragraph 23 upon which the judge allowed the appeal. In short the judge concluded that the claimant would not be able to obtain a CSID on the basis that he does not have and was unlikely to be able to obtain one, because he does not have family in Baghdad who could accommodate him, did not speak Arabic, and there was no likely sponsor enabling him to rent accommodation or otherwise support him.
5. The difficulty with the decision begins with an issue that was not raised in the appeal grounds but is set out in paragraph 20 of the decision. The respondent had mistakenly accepted that the claimant's home area Basra was a contested area. Pursuant to the country guidance case law extant at that time, Basra was not a contested area and therefore there was no Article 15(c) risk. That in fact remains the situation following the most recent country guidance of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).
6. It followed that the judge was proceeding on a basis having been misled by the respondent that the claimant would not be able to return to his home area and relocation to Baghdad would have to be considered. That by itself undermines the validity of the findings in paragraphs 21 and 23 of the decision but, in any event, even without that difficulty the judge simply

accepts that the claimant could not get a CSID. However, it is clear from the decision that the judge was aware that the claimant's father and other family members had returned without him to Iraq in 2017, apparently to obtain new Iraqi passports and ID cards, as well as to obtain treatment for their daughter. They had allegedly rented accommodation near the hospital some 100 Km from their home area Basra. It was said that the father did not believe that he could return to their home area because of his previous employment as an interpreter with British Forces. He has been granted leave to remain in the United Kingdom because of that work for British Forces. However, it is clear that the father and the family members did not experience any difficulties in returning to Iraq without documentation and then in obtaining the necessary documentation whilst there.

7. The judge at paragraph 17 was not persuaded even to the lower standard of proof the claimant would face any serious harm on return due to any association with his father. What the judge did not consider is that the father and other family members with the documents that they now have were obviously in a position to be able to assist the claimant to obtain a CSID, either in the UK before returning to Iraq, or shortly after arriving. Mr Tan also pointed out that given that the father was able to return with other family members in 2017 and obtain the necessary documentation, he could return on a temporary basis with the claimant to assist him to obtain that CSID documentation. The judge accepted at paragraph 21 that theoretically the father could return with him but concluded it was not a reasonable assumption to make given the father's leave to remain in the UK, the reason for its grant in the first place, and the needs of his three siblings, two of whom were at college and another disabled in residential care. Evidently, the judge did not consider a temporary return or, as stated above, the assistance the family could provide within the UK by helping the claimant with the necessary information to enable him to obtain his CSID and passport or other travel document from the Iraqi Consulate in the UK. The recent country guidance has confirmed that which previous case authority held, that it remains possible to obtain the necessary documentation and travel documentation from the Iraqi Consulate in the UK before returning to Iraq.
8. In the light of those matters, I find that the judge erred in the assessment as to whether the claimant would be able to obtain a CSID within a reasonable time of returning to Iraq. It is partly the fault of the respondent in suggesting that he could not return to the home area of Basra on the basis that it was a contested area and the judge was, as I have said above, misled by the respondent's decision. However, those findings which I find are in error of law impinge upon the finding at paragraph 23 of the decision that the judge found there was a strong likelihood that returning the claimant to Baghdad would result in his destitution within a short time and that that would amount to treatment breaching Article 3 and warranting a grant of humanitarian protection. That conclusion cannot be sustained given the errors I have outlined above.

9. In the circumstances no part of the decision of the First-tier Tribunal can be rescued and it must all be set aside.

Notice of Decision

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such as to require the decision to be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the directions below.



Signed

Upper Tribunal Judge Pickup

Dated

28 January 2020

Consequential Directions

1. The appeal is remitted to the First-tier Tribunal sitting at Manchester.
2. The appeal is to be decided afresh with no findings of fact preserved.
3. The estimated length of hearing is three hours.
4. The appeal may be listed before any First-tier Tribunal Judge with the exception of Judge Ennals and Judge Woodcraft.
5. An Arabic interpreter will be required.
6. The claimant and his father are likely to be the witnesses giving oral evidence.
7. The claimant is to ensure that all evidence to be relied upon is contained within a single consolidated indexed and paginated bundle of all objective and subjective material updated together with any skeleton argument and

copies of all case authorities to be relied upon. The Tribunal will not likely accept materials submitted on the day of the remitted appeal hearing.

8. The First-tier Tribunal will give such further directions as are deemed appropriate.



Signed

Upper Tribunal Judge Pickup

Dated

28 January 2020

**To the Respondent
Fee Award**

I make no fee award. Reasons: The outcome of the appeal is yet to be decided.



Signed

Upper Tribunal Judge Pickup

Dated

28 January 2020