Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09850/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008	**Decision & Reasons Promulgated**
On 5 February 2021	**On 23 February 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

S A
(ANONYMITY DIRECTION MADE)

Respondent

DETERMINATION AND REASONS (P)

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. I do so because this is a protection claim (see Guidance note 2013 No 1: Anonymity Orders). Unless and until a court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The Background

2. The respondent with permission, appeals against the decision of the First-tier Tribunal (Judge Cox) (hereinafter referred to as the "FtTJ") who, in a determination promulgated on 11 December 2019, allowed his protection claim.

3. I shall refer to the parties as they were before the FtT.

4. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') and is done so with the consent of the parties reflected in the email exchanges in the correspondence sent to the Tribunal on the 2 and 4 February 2021.

5. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.

6. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.

7. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

> '34.-"
>
> (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
>
> (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
>
> (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
>
> (4) Paragraph (3) does not affect the power of the Upper Tribunal to-"
>
> (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
>
> (b) consent to withdrawal, pursuant to rule 17;
>
> (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
>
> (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.'

8. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules[1], directions were sent out to the parties on the 2 September 2020 that the

[1] The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

Upper Tribunal's provisional view was that it would be appropriate to determine the following questions without a hearing:

(a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

(b) whether that decision should be set aside.

9. That decision also set out directions. It was sent out the parties by way of email. In compliance with those directions, submissions were provided by the appellant dated 23 September 2020 and a reply from the respondent on the 7 October 2020.

10. Having had regard to the grounds, the decision of the judge, the submissions and to all the evidence before me, I am satisfied that a full account of the facts are set out in the papers on file and the issue to be decided is a straightforward one. No issues have been raised other than those addressed in the written submissions. I was mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and also as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v. The Parole Board* **[2013] UKSC 61; [2014] AC 1115**.

11. In my judgment and in the light of the issues set out in the written submissions there is no complexity which necessitates an oral hearing to ensure fairness and that the decision is one which can properly and fairly be made on the papers taking into account the overriding objective as set out in the Tribunal Procedure Rules which includes the issue of delay. This is a course the parties have consented to.

12. The appellant is a national of Iraq who arrived in the United Kingdom on 22 November 2017 with his wife and child and claimed asylum.

13. The respondent refused his claim for protection on 25 September 2019. In that decision the respondent accepted his nationality and also his ethnicity and religion as claimed. However, for the reasons set out in the decision letter, the respondent did not accept that the appellant had given a credible account that he had come under threat whilst in Iraq in the way that he had claimed, and it was considered that his account of his dispute with his brothers in law had not been consistent. It was also not accepted that the men concerned held any power and influence within the PUK. The respondent also rejected his account that he had been shot at nor that he was in hiding. In the alternative it was considered that he could internally relocate to another area in the IKR and consideration was given to Article 15 (c) of the Qualification Directive.

14. The appellant lodged grounds of appeal against that decision. The appeal against that decision came before the FtTJ on the 14 November 2019 and in the decision promulgated on 11 December 2019 the FtTJ allowed his appeal on asylum grounds.

15. The FtTJ had the opportunity of hearing oral evidence of the appellant and his wife alongside the documentary evidence that had been advanced on

his behalf. The FtTJ found that the appellant had provided a credible account having taken into account the evidence and that the appellant had become involved in a dispute with his brothers in law and they had threatened to kill him and his family. The judge accepted that they had shot at him and also that he would be of continuing adverse interest on return to Iraq. The judge was therefore satisfied that he would be at risk of suffering serious harm and that the authorities could not protect him. The judge also considered the issue of internal relocation at paragraphs 61 – 68 and reached the conclusion on the evidence that the appellant could not safely or reasonably be expected to relocate to another area in the IKR. He therefore allowed the appeal on asylum grounds.

16. The respondent applied for permission to appeal the decision advancing one ground, that the FtTJ had failed to make any findings as to why the appellant's fear engaged the Refugee Convention in the light of the decision letter where it was disputed that his claim in fact engaged the Refugee Convention. Thus, it was argued that the judge had materially erred in law by allowing the appeal under the Refugee Convention whilst dismissing the claim for humanitarian protection.

17. Permission to appeal was granted by the First-tier Tribunal (Judge Grant) on 17 January 2020.

18. A Rule 24 response submitted on behalf of the appellant on 23 September 2020, it was accepted that the FtTJ was in error in allowing the appeal on asylum grounds but that the appeal against the decision should be allowed on humanitarian protection grounds. The reply noted that the FtTJ's positive credibility findings and findings on risk on return had not been challenged by the respondent and therefore in the light of the single ground of appeal, the appeal should be allowed on humanitarian protection grounds.

19. Following that replies submissions were sent to the tribunal on behalf of the respondent dated 7 October 2020 noting the concession made on behalf of the appellant but that the grounds did not indicate that the appeal should be allowed on this basis.

20. Since the parties have filed their written submissions, further correspondence with the tribunal has followed. The respondent accepted that in light of her lack of challenge the primary and positive findings of fact by the judge including the findings on the unreasonableness of internal relocation, that the appellant would be entitled to have his appeal allowed on the grounds of humanitarian protection.

21. The respondent therefore invited the tribunal to remake the appeal on the papers dismissing the appellant's claim under the refugee Convention that allowing his appeal on the grounds of humanitarian protection (I refer to the email sent to the tribunal on 29 January 2021).

22. Following that correspondence by email, a reply was received from the appellant's solicitors sent 1 February 2021 in agreement with that course

and also invited the tribunal to remake the decision by allowing the appeal on humanitarian protection grounds.

23. The grounds of challenge advanced on behalf of the Secretary of State do not seek to impugn or otherwise challenge the positive credibility findings made in respect of the appellant's factual claim nor the assessment made of risk on return (that he would be at risk of serious harm) or that of internal relocation. That is plainly accepted now in the email correspondence on behalf of the respondent.

24. It is also accepted on behalf of the appellant that the FtTJ was in error in allowing the appeal on Refugee Convention grounds when the basis of the factual claim did not fall within the Convention grounds. However as both parties agree, on the assessment made by the FtTJ which was not challenged by the respondent's grounds, the proper outcome should have been to allow the appeal on humanitarian protection grounds rather than on asylum grounds.

25. For those reasons, and in the light of the parties' agreement, I am satisfied that the decision of the FtT allowing the appeal on asylum grounds was an error of law as the factual account did not fall within the Convention grounds although there is no dispute that the appellant would be at risk of serious harm. Therefore, as the parties have set out, that part of the decision should be set aside and should be remade dismissing his asylum appeal but allowing the appeal on humanitarian protection grounds.

Notice of Decision:

The decision of the First-tier Tribunal decision of the FtT allowing the appeal on asylum grounds was an error of law and that part of the decision should be set aside and should be remade allowing the appeal on humanitarian protection grounds.

The decision is remade as follows: the appeal is dismissed on asylum grounds but allowed on Humanitarian Protection grounds and Article 3 (human rights grounds).

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 his family members. 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 Upper Tribunal Judge Reeds Dated: 5 February 2021

Upper Tribunal Judge Reeds

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.