



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003253

First-tier Tribunal No: PA/09072/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 June 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DQA
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr K Wood, legal representative

Heard at Field House by remote video means on 12 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Williams promulgated on 25 February 2022, in which the DQA's

appeal against the decision to refuse his protection and human rights claim dated 5 September 2019 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with DQA as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Iraq who arrived in the United Kingdom on 28 June 2019 and claimed asylum the following day on the basis that he was at risk on return from his father, an alcoholic who had abused him and who had retired from the Peshmerga.
4. The Respondent refused the application the basis that the Appellant's claim was not credible, that there was no risk to him on return to Iraq and in any event he could internally relocate to the IKR. There was no grant leave on the basis of humanitarian protection or human rights, the Appellant did not meet the requirements of the Immigration Rules and there were no exceptional circumstances to otherwise warrant a grant of leave to remain.
5. Judge Williams allowed the appeal in a decision promulgated on 25 February 2022. In the final part of the decision, it is simply said that the appeal is allowed without specifying the grounds on which the Appellant was successful. The findings are contained in paragraph 32 as follows:
 - (i) For the reasons given above I am satisfied that the Appellant was living with an abusive alcoholic father but I am not satisfied that the Appellant will be at risk on return from his father.
 - (ii) For the reasons given above I am satisfied the Appellant is not in contact with family and does not have/will not have access to a CSID card.
 - (iii) For the reasons given above I am satisfied the Appellant cannot safely and reasonably relocate in Iraq.
6. However, in paragraph 33 the decision states that the Appellant does have a well founded fear of persecution for a Refugee Convention reason in Iraq and would face a real risk of persecution if returned. Further, in paragraph 34 the decision states that the Respondent's decision was unlawful under section 6 of the Human Rights Act 1998 for the reasons given above.

The appeal

7. The Respondent appeals on two grounds, first, that the First-tier Tribunal erred in law in allowing this appeal under the Refugee Convention when it would appear the intention was to allow it on Humanitarian Protection grounds. Secondly, that the First-tier Tribunal erred in law in the alternative for failing to give adequate reasons for finding that the Appellant has a well-founded fear of persecution for a refugee convention. Initially the Respondent proposed that the appeal being allowed on Refugee Convention grounds as a 'slip of the pen' amendable to being corrected under the slip rule, rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, but in any event is an error of law.
8. In a rule 24 response, the Appellant indicated that the findings of the First-tier Tribunal were sufficiently reasoned to justify a refusal of the Appellant's appeal on Refugee Convention grounds (without challenge to those findings) and that there had been an omission of the word 'not' in paragraph 33 of the decision. The error could be amended under the slip rule or in the alteranative, dispose of without a hearing by consent.

9. Unfortunately the rule 24 response was not considered until very shortly before the hearing such that there was not sufficient time to address the matter without a hearing. At the hearing, the parties were in agreement that it was the intention of the First-tier Tribunal to allow the appeal on humanitarian protection grounds and under Article 3 of the European Convention on Human Rights; but to dismiss the appeal on Refugee Convention grounds. Mr Clarke on behalf of the Respondent indicated the error was best corrected by consent or a decision of the Upper Tribunal, but not under the slip rule given that there would also need to be added a paragraph on humanitarian protection. Mr Wood on behalf of the Appellant indicated that a decision by consent or by the Upper Tribunal would allow a swift resolution to the error.

Findings and reasons

10. The appeal is allowed with the consent of the parties to the extent that the decision of the First-tier Tribunal is set aside and remade so as to dismiss the appeal under the Refugee Convention and allow the appeal on humanitarian grounds and under Article 3 of the European Convention on Human Rights. It is clear from the reasons in the body of the First-tier Tribunal decision as confirmed in the findings summarised in paragraph 32 that that was the intention of the First-tier Tribunal, so this decision corrects the record to accurately reflect those findings.
11. The outcome of the appeal is corrected by way of a decision rather than under the slip rule as to do so would require more than a correction of one or two words but would need an additional part as to humanitarian protection which is not appropriate. The error in the conclusion as to the outcome amounts to a material error of law given it is directly contrary to the findings made, on which basis the appeal could not legitimately have been allowed on Refugee Convention grounds. The findings of fact are otherwise preserved.

Notice of Decision

The making of the decision of the First-tier Tribunal did the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The decision is remade as follows:

The appeal is dismissed under the Refugee Convention.

The appeal is allowed on humanitarian protection grounds.

The appeal is allowed under Article 3 of the European Convention on Human Rights.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th June 2023