



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

Appeal Number: PA003742017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR AHMAD SIDIQI AHMAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Moriarty, Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iraq born on 20<sup>th</sup> September 1999. He is consequently a minor. The Appellant left Iraq in December 2015 or January 2016 and travelled to Turkey. From thereon he travelled to Greece, Germany and then France before travelling to the UK in a lorry

arriving on 23<sup>rd</sup> May 2016. The Appellant claimed asylum on 5<sup>th</sup> July 2016. The Appellant's claim for asylum, as set out in the Notice of Refusal, was that if returned to Iraq he would face mistreatment due to his imputed political opinion, namely a fear of ISIS, fear of sectarian violence, and a fear of being forced to join the Peshmerga by his father. The Appellant's claim was rejected by Notice of Refusal dated 29<sup>th</sup> December 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal J Bartlett sitting at Taylor House on 10<sup>th</sup> February 2017. In a decision and reasons promulgated on 20<sup>th</sup> February 2017 the Appellant's appeal was dismissed on asylum, humanitarian protection and human rights grounds.
3. On 2<sup>nd</sup> March 2017 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Ford on 20<sup>th</sup> June 2017. Judge Ford noted that it was argued that the Tribunal had erred in finding that the Appellant could safely relocate if returned to Baghdad as a minor, particularly as it was conceded by the SSHD that no efforts had been made to trace the Appellant's family. Judge Ford noted that it was accepted that the Appellant's home is in a contested area and that he could not safely return to his village. The Tribunal found that the Appellant would be met at the airport by his parents or other family members who would be able to arrange his travel to Badewa near Erbil.
4. It is on that basis that the appeal comes before me to initially determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Moriarty. Mr Moriarty is familiar with this matter. He appeared before the First-tier Tribunal. He is also the author of a skeleton argument dated 10<sup>th</sup> August 2017 which is produced to the Tribunal today. The Secretary of State appears by her Home Office Presenting Officer, Mr Duffy.

### **Submission/Discussion**

5. Albeit this is an appeal by the Appellant it was agreed Mr Duffy would go first in his submissions. He points out that the First-tier Tribunal Judge did not find the Appellant's evidence credible and that consequently, following the approach adopted by the Court of Appeal in *MA (Somalia)*, the general situation in Iraq did not "save" the Appellant's appeal. He submits that the Appellant's claim was based on a fear of his own family and that that had been rejected and consequently it is not open to the Appellant to know where his family is and that if he is returned to Iraq it would be incumbent upon the family to meet him at Baghdad Airport where they would have CSIDs and would then escort him back to his home area. It is his submission that if the claim for persecution falls away, then the appeal does as well. He accepts that the Secretary of State does not know where the Appellant's family is and that the Appellant, he believes, must know because he contends that his family are his agents of persecution. He submits that the approach adopted by the judge was correct and that the appeal should be dismissed.

6. Mr Moriarty refers me to his skeleton argument, pointing out that it is not in dispute that the Appellant is an unaccompanied minor, born and raised in a village on the outskirts of the Ninewah Governate in a contested region of Iraq. He further points out that in her judgment, First-tier Tribunal Judge Bartlett accepted that the Appellant was at risk on return to his home area for a Refugee Convention reason and that the Secretary of State accepts that the Appellant is not in contact with his family. He further points out that other facts are accepted. Firstly, that the Appellant is not from the IKR but from the disputed territory. Secondly, that his family fled Mosul. Thirdly, that it has never been suggested that the Appellant's family is from Baghdad. Against this background he submits that it cannot be assumed that all will fall into place on the Appellant's return to Baghdad. He refers me to the recent decision in *AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944*, specifically referring me to paragraphs 9 to 11 of that decision, which emphasises that it will be necessary for the Tribunal to decide whether or not the Appellant has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq and that his ability to obtain a CSID is likely to be severely hampered if he is unable to go to the Civil Status Affairs Office of the Appellant's Governorate because it is in an area where Article 15(c) serious harm is occurring. Further he submits that the evidence does not demonstrate that the "Central Archive" which exists in Baghdad, is in practice able to provide CSIDs to those in need of them.
7. Against that background he urges me to make a finding that the Appellant is a refugee and that he cannot return to his home area for a Convention reason and therefore, in any event, could not be returned as he is an unaccompanied minor.
8. He submits the judge has gone way beyond her remit and has made assumptions that family life will and can exist. He submits that the Appellant was not given an opportunity to respond to the judge's inferences that he is in contact with his immediate family and that there are adequate reception arrangements at the date of hearing. Further he contends that there is a fairness point in a case such as this where a point is expressly conceded by one party in that it is unfair to decide the case against the other party on the basis that the concession was wrongly made unless the Tribunal indicates that it is minded to take that course.
9. He emphasises that no contact has been made with any of the Appellant's family in Iraq by the SSHD or other agents of the UK authority and that contrary to the judge's assertion at paragraph 32 that there is evidence upon which it can be reasonably inferred that they would be able to assist him in "obtaining the necessary documentation" in Baghdad, even assuming that they are able and willing to travel there, in light of the volatility of the country conditions in Iraq and the fact that his family originate from a contested area. He submits that even if the Appellant is returned to Baghdad on the findings of fact that stand, the Secretary of State accepts that there are no reception arrangements and therefore he submits that the assumptions of the Immigration Judge are not supported

in law or in fact. If the judge is going to depart from the accepted stance, then it is incumbent, he submits, upon the judge to give reasons.

10. He further submits that it cannot be assumed that an unaccompanied minor will be alright if returned to Baghdad and that there is no evidence to say that he will. Therefore he invites me to say that the Appellant cannot be returned and asks me to re-make the decision allowing the appeal.
11. In brief response Mr Duffy advises that he agrees and that if I find an error of law, then it is appropriate for me to re-make the decision.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

14. Whilst in the Grounds of Appeal the Appellant does not agree with the credibility findings of the First-tier Tribunal Judge and maintains his fear of his father is genuine, he acknowledges the difficulty in challenging those credibility findings and applies for permission to appeal solely on the basis that the finding that he can safely and reasonably be expected to relocate from Ninewah to Erbil, having been returned to Baghdad as an unaccompanied minor, is irrational and/or unlawful. The Secretary of State has made concessions that they have made no effort to trace the Appellant's family and has conceded that there are no adequate reception arrangements in Iraq. It is, of course, Mr Duffy's submission that the

reason that they have made no effort to trace the Appellant's family is because, based on the manner in which he presented his asylum application in the first instance, the Secretary of State was entitled to conclude that the Appellant knew exactly where his family was, bearing in mind that it was a fear of them upon which he placed reliance. Having made that finding and the Appellant's testimony having not been found thereon to be credible, his submission is that the judge was entitled to make findings that she did.

15. However, I am satisfied that that alone does not mean that the decision is sustainable. There are other facts which appear to have been reached by the First-tier Tribunal Judge, in particular on the basis that it was not in dispute that there are not adequate reception arrangements for him in Iraq, and I agree it was not reasonable therefore for the First-tier Tribunal Judge to infer that there were at the date of hearing or that if the Appellant is returned to the airport at Baghdad as an unaccompanied minor, his immediate family would be waiting for him to take him safely to Erbil.
16. This case has to be looked at in the round and even if there is a finding of adverse credibility by the First-tier Tribunal Judge which remains unchallenged, it does not infer that there are positive findings that the Appellant is going to be met at Baghdad Airport by his family, all of whom would have valid CSIDs, and who would take him by air back to their home. There is not a shred of evidence to say that such a finding would take place.
17. Consequently I am satisfied that the finding of the First-tier Tribunal Judge is unsafe and that had the judge considered all the other facts, either agreed or outstanding, other than the credibility of the Appellant's testimony that he has a fear of his family, then it is quite possible that the judge would have come to another decision with regard to his ability to return to his home. In such circumstances there are material errors of law and I proceed to re-make the decision.

### **Findings on the Re-making of the Decision**

18. It is not a matter in dispute following *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* that the Appellant is at risk on return to his home area for a Refugee Convention reason. Had the Appellant's case been put differently at first instance, then this appeal may never have taken place. However, subsequent to the decision of the First-tier Tribunal Judge, the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944* has annexed amended country guidance, in particular with regard to the ability of an Appellant on return to Iraq to obtain a CSID. The law therein has been mentioned above, particularly in the submissions made by Mr Moriarty. I have already found that the Immigration Judge in part sought to replace the concessions made by the Secretary of State by failing to apply relevant legal principles in the binding country guidance, in particular bearing in mind that the Secretary

of State had not sought to put forward any evidence upon which the Tribunal could properly conclude that the Appellant's family in Iraq would be willing and able to receive and protect him.

19. This is an Appellant who would be returning to Iraq as an unaccompanied minor. There is no evidence to say that he has parents who would welcome him or even in the alternative, be in a position to meet him. There is no evidence that he would be in a position to obtain a valid CSID. Whilst it is accepted that the Appellant cannot return to his home area, there is no evidence to say that he would in such circumstances even be able to fly to the IKR or that he would be welcome there on return by his family. In all such circumstances the country guidance makes it clear that it is not possible to return this Appellant to Iraq through Baghdad. In such circumstances following country guidance I re-make the decision allowing the Appellant's appeal.

### **Notice of Decision**

The decision is re-made allowing the appeal of the Appellant on both asylum and human rights grounds.

No anonymity direction is made.

Signed

Date 24<sup>th</sup> August 2017

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 24<sup>th</sup> August 2017

Deputy Upper Tribunal Judge D N Harris