



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

Appeal Number: PA/04359/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16th January 2018**

**Decision & Reasons Promulgated
On 22nd January 2018**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MR PESHRAW HADI MOHAMMAD
NO ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: MS E SANDERS (Counsel)

For the Respondent: MR P NATH (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge Housego (FTT) in a determination promulgated on 9th June 2017 dismissing his appeal against a decision of the Secretary of State dated 21st April 2017 refusing his claim for asylum and human rights. This is an error of law hearing.

Background

2. The Appellant is a citizen of Iraq of Kurdish ethnicity and from the district of Makhmur. He claimed asylum on the grounds that he feared threats from a tribe/family following a land dispute with his own family and as a result of which his brother was killed and his family threatened. He additionally raised Article 15c.

Grounds of appeal

3. In lengthy grounds of appeal the appellant argued that the FTT erred as follows;
 - a) that it failed to apply the correct standard of proof for an asylum appeal,
 - b) failed to make proper findings of fact in respect of material matters including the death of the appellant's brother and past events of threats made to the family,
 - c) failed to apply the country guidance case of **AA[2015] UKUT 544** and rather relied on a Home office guidance note of policy and "current affairs reports" indicating that Kirkuk was no longer an area where Article 15c applied [14],
 - d) failed to adequately reason its decision on internal relocation [43] by failing to take into account relevant individual factors including employment, family, ID cards.
 - e) failed to consider lack of ID documents in the context of the protection claim.

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted by UTJ Kebede on 7.11.2017 who found it arguable that the FTT failed to make clear findings on the evidence and failed properly to consider the appellant's circumstances in line with **AA (Article 15c) (Rev 2) [2015] UKUT 544**.
5. The respondent's Rule 24 response dated 23.11.2017 opposed the application. The FTT was entitled to depart from the Country guidance case following Upper Tribunal guidance Note 2011 No 2 at paras 11 and 12.

Error of law hearing

Submissions

6. At the hearing before me Ms Sanders representing the appellant adopted the grounds of appeal and argued that the FTT failed to make clear findings of fact on relevant matters and that failure had infected the further consideration of Article 15c. The FTT failed to properly justify with reference to background evidence its reason for not applying **AA** which was the current country guidance for Iraq. The FTT simply adopted the respondent's policy without consideration of evidence. There was no analysis of any current affairs reports.
7. The FTT variously referred to different standards in its decision including "substantial likelihood" [12] which suggested that it had applied a higher standard than the appropriate lower test of "real risk."

8. The FTT mistakenly located Kirkuk in the Kurdistan region which indicated a lack of care in its consideration of the appeal. The Appellant is from Kirkuk which is not in IKK. The FTT failed to apply **AA** in terms of relocation without giving reasons, and ought to have engaged in a fact sensitive analysis of relevant factors.
9. In response Mr Nath for the Respondent relied on the Rule 24 notice and contended that the FTT decision was sustainable. The FTT was entitled to follow the respondent's policy as to the improved situation in Kirkuk. It was clear that the FTT had applied a lower standard at [32-34] and found that the account was not credible [41]. Any error in this regard was not material. It was a question of style as to how the FTT had set out facts and reasoning and when looked at as a whole the decision was adequate. FTJ Ford was correct in his reasoning given for refusal of grant of permission. The appellant had not relied on Article 15c in his initial claim but this had been added by his legal representatives.
10. Ms Sanders responded that the appellant was not required to specifically plead Article 15c. The FTT had reached a broad conclusion which did not save the inadequate reasoning for its findings or decision. It was accepted that the Court of Appeal judgment in **AA** was post determination of this appeal. The FTT ought to have considered the appellant's circumstances in light of the fact that he was not from the IKK.

Discussion and conclusion

11. I have decided that the decision and reasons contains errors in law and that the decision is to be set aside. The decision itself is lengthy amounting to 21 pages much of which contained statutory provisions and/or judicial decisions. The FTT's consideration of the actual issues under appeal was set out in the last 3 pages. When considering each individual ground separately I have some reservations as to materiality in terms of the outcome, however when looking at the grounds as a whole, I conclude that when taken together the determination is not sustainable as the errors have infected and impacted on the decision made. The grounds of appeal are made out. I am satisfied that the FTT failed to give sufficiently evidenced and justified reasons in support of its decision not to apply the country guidance case of **AA** and as such failed to comply with the Practice direction 12.2-12.4. I am satisfied that the FTT failed to make clear findings on relevant matters such as the death of the appellant's brother. Further the FTT's factual mistake that the appellant came from the IKK or that Kirkuk was in the IKK did not inspire confidence that the FTT had carefully considered the relevant issues or given anxious scrutiny. The appellant was not from Erbil, the capital of the Kurdistan region. The FTT concluded that the appellant's account was lacking in credibility but did not specifically or satisfactorily set out its findings of fact on material matters. The decision does not make it clear what facts were believed,

disbelieved or those it found to be uncertain. The FTT set out speculative conclusions based on if the account were true and/or untrue [40] & [43], a flawed approach.

12. The FTT was bound to consider Article 15c and failed to do so properly as the facts were not clearly established. The application of Article 15C is intended to be fact sensitive and which the FTT failed to do. There was some confusion in the decision as to what standard of proof was applied and whilst accepting the FTT did set out the correct standard at [9] there were also references to a higher standard applied at [12] where the phrase “substantial likelihood “ is used and towards the end of the decision at [32] where the lower standard is described as “ that it reasonably likely to be true” and at [34] reference is made to the “balance of probabilities”.

Decision

13. There are material errors of law in the decision which shall be set aside. The appeal is to be remitted to the First-tier Tribunal (excluding FTJ Housego) for a hearing de novo at Taylor House.

Signed

Date 18.1.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

No fee award made

Signed

Date 18.1.2018

GA Black

Deputy Judge of the Upper Tribunal