



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14025/2018

THE IMMIGRATION ACTS

Heard at Cardiff CJC
On 27 June 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR D B
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Latimer, Legal Representative

For the Respondent: Miss S Rushforth, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iraq, date of birth 23 October 1985, appealed against the Respondent's decision, dated 29 November 2019, to refuse a protection and human rights based claim. The Appellant was subject to deportation process.
2. His appeal came before First-tier Tribunal Judge Suffield-Thompson (the Judge), who on 22 March 2019 dismissed the appeal. Permission to appeal was given by Upper

Tribunal Judge Martin on 23 April 2019. In granting permission Upper Tribunal Judge Martin said:

“While the majority of the Judge’s reasoning is impeccable, it is arguable that she erred in failing to take into account, when considering Humanitarian Protection, that the Appellant is from Kirkuk, a contested area. The Judge does not appear to have the country guidance cases in mind.”

There remains a factual dispute as to whether the Appellant has family and/or comes from the area of Mosul or Kirkuk and issues relating to the safety of the Appellant being able to return to whichever is the home area and being able to obtain the necessary identity document (CSID) or some other form of documentation to establish an entitlement to be in that particular area. There has been a wealth of cases dealing with safety on return to Iraq and what has been to a degree a varying picture.

3. The criticism that was confidently made of the Judge’s decision was the somewhat bare acceptance that the Appellant, whose credibility in relation to his claims has been serially and severally damaged, could return to Iraq. Whether there was an uncle in Iraq who may provide the necessary documentation and, assuming it was obtainable, were all issues which the Judge really did not get hold of. To say, as she did, “I find no reason why the Appellant cannot back and live in Kirkuk or Mosul and seek the help and support of his family”, was perhaps rather missing the purpose and point of the case law. It seemed to me that there was virtually no merit whatsoever in the Appellant’s claim other than in relation to the issue of safety of return to whatever was the home area. The conclusions of the Judge do not provide confidence that there was a material finding of fact from which I could start from to conclude that there was no real risk on return to the home area in Iraq. In the absence of evidence as to the availability of a functioning governorate or other system to enable documentation as required to be produced or supplied within a reasonable period of time were the Appellant to be in Baghdad.

4. For these reasons, although I would agree with Miss Rushforth that the Appellant's credibility was generally very badly damaged by the events that have transpired and the claims he had made, let alone his criminality and willingness to dissemble: The position remained that the Judge's analysis of it was not properly done and much though it might be argued in general terms that any other Tribunal properly addressing the facts would have reached a similar conclusion simply was not good enough in this case, given the clear country guidance and case law. The assessment, which will have to be done again in the First-tier Tribunal. There was a further ground of appeal which related to broader issues which Miss Latimer confirmed related to the children and their best interests were not being pursued. The Original Tribunal's decision can not stand

DECISION

The appeal is allowed to the extent that the matter is to be remade in the First-tier Tribunal.

DIRECTIONS

- (1) If possible, list before a Designated Immigration Judge of the First-tier Tribunal or alternatively the Resident Judge Newport. Do not list before First-tier Tribunal Judge Suffield-Thompson.
- (2) Any further documentation relating to safety on return to the areas of either Kirkuk or Mosul or Baghdad to be served by the parties upon each other and the IAC not later than ten working days before the further hearing of the appeal.
- (3) The findings of fact in relation to the Appellant's criminality and conduct to stand but no further facts relating to the issue of safety of return to Iraq.

- (4) Any further directions to be given by the First-tier Tribunal on application in writing with reasons.
- (5) Please list with reference to Miss Latimer's availability [contact number provided].
- (6) Anonymity order continued.

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 any member of his family. 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

Date 15 September 2019

Deputy Upper Tribunal Judge Davey

P.S. I regret this file was lost at Field House causing delay in promulgation