Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00925/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision & Reasons Promulgated**
On 15th March 2017	**On 6th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR AMIR HUSSEIN ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif (Solicitor)
For the Respondent: Ms Peterson (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ferguson, promulgated on 14th September 2016, following a hearing at Birmingham Sheldon Court on 2nd August 2016. In the determination, the judge rejected the Appellant's asylum claim, but allowed the appeal on the

basis of humanitarian protection, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is male, a citizen of Iraq, and was born on 20th April 1992. He appealed against the decision of the Respondent Secretary of State dated 18th January 2016 refusing his application for asylum and for humanitarian protection in line with paragraph 339C of HC 395.

The Appellant

3. The Appellant's claim is that he lived in the town of Yangiga and worked there at the water supply plant, mostly responsible for guarding the water tanks. Daesh took over the area where he lived and the following months he was approached at his work by people from Daesh who asked him to join them. He did not want to do so so his parents made arrangements for him to leave with the assistance of an agent. His fear now is that if he is returned back to Iraq he will be killed by Daesh because he did not join them when he was asked to do so.

The Judge's Findings

4. The judge gave consideration to the appeal and highlighted the following matters. First, the details of the Appellant's claim are set out in answer to questions 48 to 102 and there is one year between the first visit to him and the last visit to him, but these visits show that the purpose of the visit was not to recruit the Appellant to Daesh, and it could not be plausibly argued that there was an attempt to recruit the Appellant to Daesh against his will (paragraph 14). Second, the upshot of the background evidence shows that the Appellant, like many other people in his area, simply want to leave the strict regime in the country and he had tried to leave many times and had planned to do so by paying an agent. Following many attempts to leave one succeeded in August 2015. Third, the country guidance case of **AA [2015] UKUT 544** makes it quite clear that the Appellant is not somebody who stands to benefit from subsidiary protection under Article 15(c) of the Qualification Directive. This is not least because Kirkuk is not part of the independent Kurdish region (IKR). The Appellant would not be returned to Iraq via IKR and could not practically relocate there. The Tribunal in **AA** made it clear that all of the citizens of Iraq would be returned via Baghdad. Given that Yangiga is in the conflict area of Iraq, it was established that the Appellant could not safely return to his home area from Baghdad. The outcome of the appeal therefore depended upon the reasonableness of the Appellant relocating to Baghdad. The evidence showed that the Appellant has no family or other support available to assist him in Baghdad. He has no Sponsor to help him obtain accommodation. He does not speak Arabic. He would find a barrier to getting employment there. All these factors lead to the

conclusion that returning him to Baghdad would be unduly harsh (paragraph 20).

5. On this basis, the appeal was allowed on the basis of humanitarian protection, even though the asylum claim itself was dismissed.

Grounds of Application

6. The grounds of application state that the judge made contradictory findings in: failing to give adequate reasons for rejecting the Appellant's asylum claim; failing to make a finding or give reasons relating to the Appellant's reliance on paragraph 276ADE; and in allowing the appeal on the basis of humanitarian protection, but refusing the asylum claim, as that was irrational.

7. On 7th October 2016, permission to appeal was granted on the basis that it did appear that there was a *prima facie* for suggesting that there was a lack of clear and adequate reasoning as to why, having accepted that the Appellant would be at risk in his home area and that internal relocation is not available to him, he has not made out his refugee claim. There was also a lack of any decision in relation to the Appellant's reliance on human rights grounds.

8. Accordingly, what was being maintained here in the Grounds of Appeal was that the decision to allow the Appellant's appeal under humanitarian protection grounds was not appealed. However, the decision to reject the Appellant's appeal under the Refugee Convention was being appealed because there was inadequate reason, a failure to assess persecutory risk on return, and a failure to determine the Appellant's eligibility under paragraph 276ADE, given the lack of reasoning in this regard.

9. On 25th October 2016, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the Appellant's refugee claim was predicated upon his being at risk of recruitment by Daesh. The judge held (at paragraphs 14 to 16) that the assertion of forced recruitment was not credible. At paragraph 16, the judge dismissed the Appellant's asylum claim. At paragraph 17 the judge found that the Appellant's home area is a contested region under the control of Daesh and as such the Appellant would be at risk of indiscriminate violence. This did not mean that he stood to win his appeal under the Refugee Convention.

Submissions

10. At the hearing before me, Mr Sharif submitted that this was an upgrade appeal. The judge had not given adequate reasons for why, in rejecting the claim under the Refugee Convention, internal relocation was available to the Appellant. He referred to the Grounds of Appeal. Mr Sharif submitted that the repeated visits to the Appellant was indicative of a "softer approach" by Daesh, such that the judge was in error in concluding

(from paragraphs 14 to 16) that there was no attempt to recruit him when these visits were being made.

11. For her part, Ms Peterson submitted that she would rely upon the Rule 24 response. The judge was clear that the repeated visits to him was not a "genuine attempt to recruit Mr Ali to Daesh against his will" (paragraph 14). Furthermore, it was an understandable wish that the Appellant would not want to live in an area controlled by ISIS, but this did not show the Appellant to be at risk of ill-treatment or recruitment (paragraph 16). The Appellant had now been granted humanitarian protection and the appeal on the basis of a claim under the Refugee Convention was futile. The judge was entitled to conclude that this was the best that the Appellant could get by way of protection.

12. In reply, Mr Sharif submitted that it was almost inevitable that the Appellant would now be tracked down by agents of Daesh upon return. The judge had failed to make a clear finding on this point. It was inevitable that this would happen because the Appellant came from Yangiga. He had been planning to leave for a long time. The risk was evident to him. It was simply logical, if the Appellant came from Yangiga, to say that the Daesh were not attempting to recruit him against his will.

13. Following the Hearing, at the end of the day, I dreafted my determination.

No Error of Law

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion notwithstanding Mr Sharif's valiant efforts to persuade me otherwise. My reasons are as follows.

15. First, the risk to the Appellant is a matter of evidence. It is true that Daesh have taken control of Yangiga. The judge recognises this. However, in his response to questions (from question 48 to 102 of the interview) the Appellant referred to a person who came to check the water plant (see specific answers at question 66 and 67). The subject of Daesh was raised, but the purpose of the visit was not to recruit the Appellant to Daesh. The judge makes a clear finding on this (at paragraph 14). A second person who then came to see the Appellant, visited him three times before asking him to join Daesh on the third occasion. The Appellant stated that he left within days of this event taking place. The judge is clear that, "this account is contradicted by its earlier evidence in which he said that he had tried unsuccessfully to leave the village many times before the night he was able to get out" (paragraph 15). The judge reads this evidence in conjunction with other evidence (at question 103) that many people had already left Yangiga and others were planning to do so. Finally, the judge was clear that the Appellant was not at risk of being recruited by "Hamza" (paragraph 16).

16. Second, the Appellant has not made out his refugee claim because the judge, having applied **AA [2015] UKUT 544**, has recognised that the Appellant could not relocate to Kirkuk, which is not part of the independent Kurdish region, with the result that he would be returned to Iraq via Baghdad. It is in the analysis of that particular form of return, that the judge concludes that this return would not be reasonable and would amount to unduly harsh consequences for the Appellant because he has no family, no visible means of support, and no prospects of getting accommodation or employment in Baghdad (paragraph 20). The return would therefore not be viable to Baghdad. The Appellant was only left with the situation of a return to Yangiga where Daesh/ISIS had taken over, and here there would be a risk of indiscriminate violence to him.

17. Accordingly, it is not the case that the judge fails to give an adequate reason as to why the Appellant has no persecutory risk on return awaiting him (see ground 2.1 of the Grounds of Appeal). It is not the case that he would face risk on return to Iraq as a failed asylum seeker (paragraph 3.1). As to paragraph 276ADE, and the possibility of there being very significant obstacles to the Appellant's reintegration into Iraq, this is not a material error of law, given that he has come from Yangiga and would be able to find reintegration there into the society from which he hails, and is not an insurmountable obstacle to him, in the absence of a persecutory risk, as the judge found.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 6th July 2017