



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

Appeal Number: PA029292016

THE IMMIGRATION ACTS

Heard at Bradford

**Decision &
Promulgated
On 7 June 2017**

Reasons

On 6 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**SK
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Frantzis of Counsel

For the Respondent: Mrs Pettersen a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The brevity of this decision is due to the commendable focus of both representatives on the issues in the case.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify SK or any of his family members. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings. I do so in order to preserve the anonymity of SK given this was a protection claim.

3. The Respondent refused SK's application for asylum or ancillary protection on 9 March 2016. His appeal against this was dismissed by First-tier Tribunal Judge Cox ("the Judge") following a hearing on 17 November 2016.

The grant of permission

4. Upper Tribunal Judge McWilliam granted permission to appeal (7 March 2017). She said it is arguable that the Judge materially erred (presumably in not adjourning the appeal) as the Respondent changed her case at the beginning of the hearing by asserting that Kirkuk was no longer in a contested area and that consequently SK's return would not engage article 15C. It was arguable that it was procedurally unfair as SK was not aware of the changed position prior to the hearing.

Respondent's position

5. It was submitted in the rule 24 notice (24 March 2017) that the Respondent's position had changed in August 2016 in a public Country Guidance Report that was written 5 months before SK's expert's report (Sheri Laizer) and was a document the Judge was entitled to rely upon.

Discussion

6. The Country Guidance report on which the Respondent relied was issued in August 2016. It was pointed out by Miss Frantzis that the Respondent issued more than one report in August 2016 on the position regarding Iraq. She asserted that the reference to the August 2016 guidance in Ms Laizer's report from November 2016 may not have been the new guidance issued by the Respondent. I do not agree that this is relevant because Ms Laizer is an expert and was plainly aware of the existence of all the August 2016 reports as otherwise she would not be an expert. She would clearly be aware of the changed position having been instructed where SK came from. She had the opportunity to comment on the new position if she thought that the Respondent's guidance was inaccurate. I do not therefore agree that the Judge materially erred in not adjourning the hearing to enable fresh evidence to be adduced, especially as SK's Counsel made no such application presumably as that Counsel saw no unfairness to SK in then proceeding.
7. I do not agree with Miss Frantzis that the Judge materially erred at [59] regarding whether Kirkuk was no longer under the control of Isis either temporarily or permanently. The Judge was entitled to note with caution that the change of control may be temporary, but then go on to find that the Respondent had provided cogent and credible evidence that there had been a significant change. There was no inconsistency in the

finding, merely appropriate caution prior to make an evidentially sustainable finding on the evidence available then.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Deputy Upper Tribunal Judge Saffer
6 June 2017