



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

Appeal Number: PA/08788/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2018**

**Decision & Reasons
Promulgated
On 13 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR B B A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cohen, Counsel, instructed by Coram Children's
Legal Centre

For the Respondent: Mr M McGirr, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq and a Kurd, born on 1 May 1992. He entered the UK on 27 November 2007 and claimed asylum on arrival. He was, at that stage, 15 years old. Whilst his application for asylum was refused, he was granted discretionary leave to remain until 1 November 2009 as an unaccompanied minor. His application for an extension of discretionary leave on humanitarian grounds was refused. The Appellant appealed but his appeal was dismissed on 2 February 2011 and he was appeal rights exhausted on 9 March 2011. The Appellant then lodged

further submissions that were refused, but following a judicial review the Secretary of State accepted that the Appellant has raised a fresh claim and refused the fresh claim on 28 June 2018 with the right of appeal.

2. The Appellant's appeal came before Judge N M K Lawrence for hearing on 10 August 2018. In a decision and reasons promulgated on 7 September 2018, the judge dismissed the appeal. Permission to appeal was sought, in time, on the basis that the judge had made two material errors of fact: firstly, as to whether or not the Appellant had the same mobile telephone number after April 2014, as to the Appellant not obtaining his telephone records and as to the Appellant not calling a witness and secondly, by failing to apply a material finding contained in the country guidance decision AA (Article 15(c)) Iraq CG [2015] UKUT 005544 (IAC) and failed to take into account material considerations which are as follows:-
 - (a) The Appellant is an Iraqi national.
 - (b) He is Kurdish.
 - (c) He is a Sunni Muslim.
 - (d) He originates from Kirkuk.
 - (e) He did not attend school in Iraq and cannot read or write in Kurdish Sorani or Arabic.
 - (f) He has at no point resided in Baghdad or the IKR prior to his flight.
 - (g) He has no family in Baghdad.
 - (h) He has been in the UK since 2007.
 - (i) There is no identifiable Kurdish area in Baghdad on the evidence, see AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) at 119.
 - (j) If removal were to proceed it would be by laissez-passer provided by the Iraqi government.
 - (k) A laissez- passer is a one-way travel document which enjoys no status or value as an identity document within Iraq.
 - (l) The Appellant is otherwise undocumented and does not possess a CSID card.
3. Permission to appeal was granted by First-tier Tribunal Judge Lambert in a decision dated 4th October 2018.

Hearing

4. At the hearing before the Upper Tribunal, Ms Cohen produced a skeleton argument dated 20 November 2018 and also a transcript of the proceedings before the First-tier Tribunal Judge. She made submissions in line with the grounds of appeal and the skeleton argument and made reference to the relevant aspects in the transcript which show that the judge had made material errors of law. In particular, she submitted that the Appellant's case is that he lost contact with his mother and uncle after

April 2014, which was the last time he spoke to them on the telephone. She submitted it was clear from the Court of Appeal judgment in AA (Iraq) (op cit) at [101] that this corroborated the Appellant's account, in that in June 2014, ISIL took control of Kirkuk; there was sexual violence against Sunni residents and a massive flow of internal refugees, so it was reasonably likely the Appellant lost contact with his mother and uncle at that time as he said. It is also notable that this postdates his original asylum appeal and decision and so could not have been taken into account at that time. She reminded the Upper Tribunal that the country guidance decision was binding and made reference to [67] of the judgement in R on the matter of SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940. She submitted that on this basis the judge's findings at [32] that the Appellant was not in contact with his family in Iraq was unsustainable and given that that was the basis upon which the Appellant could contact them and seek their assistance in securing a CSID, his finding in that respect was also unsustainable.

5. In relation to the matters pertaining to the Appellant's mobile telephone, set out at [13], [14] and [15] of the judge's decision, it was clear from the transcript of the Appellant's evidence that contrary to the judge's finding the Appellant has not changed his phone number, he has lost his mobile phone. Ms Cohen submitted that because it was a pay- as-you-go mobile telephone it would not have been possible, contrary to the judge's assertion, for him to have retained the same telephone number, similarly, in terms of obtaining a record of phone calls from the service provider. Ms Cohen invited the Tribunal to find there had been a material error of law to set aside the decision and remake the decision.
6. In his submissions, Mr McGirr stated although he did not know what evidence was available in relation to pay-as-you-go phone numbers, he accepted that there appears to be some merit in the other points raised in the grounds of appeal that First-tier Tribunal Judge N M K Lawrence had materially erred and invited me to set aside the judge's decision and reasons.

Decision and Reasons

7. In light of Mr McGirr's helpful concession that there were material errors of law, which vitiated the findings and conclusion of the First-tier Tribunal Judge, I set aside that decision and remit the appeal for a hearing *de novo* before a different Judge of the First-tier Tribunal. In light of the fact that it will be necessary for the Appellant to give oral evidence and that evidence to be assessed and that he will require a Kurdish Sorani interpreter, the matter will need to go back to the First-tier Tribunal. The hearing should be listed for two hours with a Kurdish Sorani interpreter.

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 their 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 Rebecca Chapman

Date 9 December 2018

Deputy Upper Tribunal Judge Chapman