Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14160/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 7th August 2019	**On 11th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

M D M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard (Solicitor)
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Obhi, promulgated on 21st March 2019, following a hearing at Birmingham on 22nd February 2019. In the determination, the judge dismissed the appeal of the Appellant, 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 a male, a citizen of Iraq, and was born on 11th August 1997. He appealed against the decision of the Respondent dated 13th December 2018 refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he feared mistreatment in Iraq because the Kurdish authorities suspected him of being involved in the sale of a truck to ISIS because it was registered in his name. However, his initial claim had been different. In his screening interview on 8th August 2016 at Yarl's Wood Immigration Removal Centre, he had said that he had come to the UK because, "I have come to have a good life to study without any problem".

Error of Law

4. At the hearing before me on 7th August 2019, there was agreement between Ms Aboni, appearing as Senior Home Office Presenting Officer on behalf of the Respondent Secretary of State, and Mr Howard, the Appellant's solicitor, that the judge below had indeed erred in law in an important material respect. This was to do with the judge's finding that the Appellant had come from the "Kurdish area" (paragraph 38), on the assumption that Kirkuk was in the IKR, when it was in fact not the case at all.

5. Therefore, if the Appellant maintained that he came from Kirkuk, and that this was a "contested" area, then the country guidance case of **AA (Iraq) [2017] EWCA Civ 944**, was important in recognising that there was at present a state of internal armed conflict in a province such as "Kirkuk" to which return would not be possible.

6. Mr Howard, pointed out that the Respondent Secretary of State had rejected the Appellant's claim on the basis that "ISIS are no longer in control of many errors including Kirkuk (paragraph 24). However, the judge had then gone on to consider whether the Appellant was at risk of "indiscriminate violence in the area to which the Respondent seeks to return him, and whether he can return to his home in the Kurdish area safely" (paragraph 38). Yet, the Appellant came from Kirkuk. He did not come from the IKR. The implication of this was that the Appellant came from the IKR, and therefore was returnable to the "Kurdish area safely".

7. Indeed, Mr Howard submitted that the judge went on to proceed precisely on that assumption when he observed that the court in **AA (Iraq) [2017] EWCA Civ 944**, had "also found that the IKR was virtually violence free, although the Respondent would not return the Appellant to that area unless he originated from it" (paragraph 41). The judge had then gone on to say that a Kurd who did not originate from the IKR could obtain entry for ten days and renew this for a further ten days if he found employment, he could remain longer. The judge held that there was no evidence that the IKR actively removed Kurds from the IKR when their permits came to an

end. Having said all of this the judge then fatally concluded that "this was not relevant in the case of the Appellant as he is from the Kurdish area and he states that issue aside he is at home with his parents" (paragraph 41). Mr Howard submitted that the Appellant was not from the Kurdish area. What had been set out in the case of **AA (Iraq) [2017] EWCA Civ 944** was accordingly entirely relevant to the Appellant's situation.

8. For her part, Ms Aboni submitted that although there had been a detailed Rule 24 response from the Respondent Secretary of State opposing the application for appeal, she would have to agree that there was a material error in the judge's determination in the fact that it was being implied that Kirkuk was in the IKR (paragraph 38 and paragraph 41). The Appellant's case was that his family is in Kirkuk. He is also from there. The judge proceeded on the basis that the Appellant was from the IKR. The judge's fundamental assumption was that the IKR was safe. If the assessment of the appeal began from that premise then the factual evaluation was bound to be one that could not be relied upon. She agreed that there was an error of law and this matter should be remitted back to the First-tier Tribunal.

9. I have accordingly concluded that the decision of the First-tier Tribunal involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside for the reasons as set out above.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision falls to be set aside. I set aside the decision of the First-tier Tribunal. I remake the decision. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Obhi pursuant to Practice Statement 7.2(b).

This appeal is allowed.

An anonymity order is made.

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 Date

Deputy Upper Tribunal Judge Juss 10th September 2019