



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2019] CSIH 24  
XA84/18

Lord Brodie  
Lord Drummond Young  
Lord Glennie

NOTE BY THE COURT

delivered by LORD BRODIE

in the Appeal

under

section 13 of the Tribunals, Courts and Enforcement Act 2007

by

AJR

Appellant

against

a decision of the Upper Tribunal (Immigration and Asylum Chamber)  
dated 7 September 2017

Respondent

**Appellant: Forrest; Drummond Miller LLP**  
**Respondent: Smith; Office of the Advocate General**

28 March 2019

**Introduction**

[1] This is an appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 against a decision of the Upper Tribunal (Immigration and Asylum Chamber) (“the UT”)

dated 7 September 2017, dismissing the appellant's appeal against a decision of the First Tier Tribunal ("the FTT") dated 7 April 2017.

[2] The appellant is an Iraqi national of Kurdish ethnicity who left Iraq in January 2016. Prior to leaving Iraq he had lived in Kirkuk. He arrived in the UK on 25 January 2016 and claimed asylum. The respondent is the Secretary of State for the Home Department.

[3] In the course of the hearing before this court, having heard the submissions made on behalf of the appellant and the exchanges between counsel for the appellant and the court, counsel for the respondent conceded that the appeal should be allowed and accordingly that, in terms of section 14(2)(a) and (b) of the 2007 Act, the decision of the UT should be set aside and the case remitted to the UT with directions for its reconsideration. We have acceded to that proposal. The purpose of this Note is briefly to record the history of the case and the circumstances in which the respondent's concession came to be made. It is hoped that the Note may be of assistance to the UT but it is not intended that the UT should feel bound by anything we have to say.

### **Procedural history**

[4] The respondent refused the appellant's claim for asylum on 19 July 2016. The appellant appealed that refusal to the FTT, in terms of section 82(1) of the Nationality, Immigration and Asylum Act 2002. It was his contention that he was a refugee as defined in the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or, alternatively, that he was eligible for a grant of humanitarian protection as that is defined within paragraph 339C of the Immigration Rules, and that his removal to Iraq would be contrary to articles 2 and 3 of the European Convention on Human Rights.

[5] The appeal to the FTT was dismissed on 11 April 2017. In paragraph 6 of its decision and reasons the FTT sets out a summary of the appellant's evidence. At paragraph 14 the FTT accepts, for the reasons it gives, that the appellant was and would be at risk to a relevant extent in Kirkuk. However, the FTT found that the appellant could be returned to another area, namely the Iraqi Kurdish Region ("the IKR") where he would not be at risk. It was the opinion of the FTT that the appellant would be able to gain employment as he spoke three languages, was young, healthy and had practical qualifications. Relocation to the IKR would accordingly be neither ineffective nor too harsh. The FTT therefore found that the appellant had failed to satisfy it (a) that he had a well-founded fear of being persecuted if he were returned to Iraq, (b) that he had a well-founded fear of serious harm such as to qualify for humanitarian protection as defined in paragraph 339C of the Immigration Rules, or (c) that there could be a breach of articles 2 or 3 of the European Convention on Human Rights.

[6] The appellant appealed to the UT. He contended that the FTT Judge had erred in law in not applying the country guidance set out in *AA (Article 15(c)) Iraq CG* [2015] UKUT 544. In particular, it was argued on his behalf that the Judge had failed to enquire about the documentation required to facilitate the return of an individual to the IKR and factors concerning relocation to Baghdad, including the availability of a Civil Status Identity Document ("CSID"), ability to speak Arabic and family support.

[7] At the hearing before the UT, it was acknowledged on behalf of the respondent that the decision of the FTT failed to set out the relevant factors for return to Baghdad but the refusal of the appellant's claim was primarily on the basis that return to Baghdad would only be a transitional move for onward travel to the IKR. It was submitted on behalf of the appellant that he would be stranded in Baghdad as his "laissez passer" (the document issued by the Iraqi authorities allowing a person such as the appellant to return to Iraq)

would be taken from him upon arrival. The country guidance was silent about the documentation required for onward travel.

[8] The UT issued its decision on 7 September 2017, concluding that there had been no material error of law in the decision of the FTT and dismissing the appeal. The determination and reasons of the UT includes the following:

- “6. The evidence was that the appellant is educated to graduate level and worked as an engineer as well as in journalism. He spoke Kurdish, Arabic and some English. He was a young single male with no significant health problems. The judge concluded that he was likely to be able to obtain employment on return.
7. It is known he has family in Iraq...
8. When he came to the United Kingdom he brought documentation to support his claim. He brought his degree certificate. He provided his journalist union card. He brought a letter from a British soldier in respect of the work he did. He was able to provide his Iraqi identity card number. He did not produce a passport but he indicated that he had been issued with one. It is my conclusion from this and the fact that he has family members in Iraq he should have little difficulty establishing his identity with the Iraqi authorities. Following from this, I concluded he would be able to obtain the CSID necessary to access aid within the country. For the same reason I find that he would be able to obtain the necessary travel documentation.
- ...
11. The nature of the laissez-passer is that it is issued by the Iraqi authorities to facilitate return. If this is taken from the appellant on arrival at Baghdad airport the country guidance is silent as to the need for documentation for onward travel within the country. Put another way, I have not been referred to any evidence that further documentation was required for onward travel within Iraq. The onus was not on the respondent to prove in each case what documents are required to board an internal flight from Baghdad to the IKR. Nor does she have to show that the appellant has them or can access them...”

[9] The appellant sought permission from the UT to appeal to the Court of Session on the basis that the UT Judge had misunderstood or misapplied the revised (by the Court of Appeal) country guidance in *AA (Iraq)* in relation to internal movement from Baghdad to the

IKR and that there were insufficient findings of fact by the UT in relation to that country guidance.

[10] Permission to appeal was refused by the UT on 6 November 2017. However, on 5 October 2018, the appellant was granted permission to appeal by this Court. In his appeal the appellant maintains that both the UT Judge and the FTT Judge materially erred in law in applying the test of internal relocation from Iraq to the IKR.

### **The issue as it came to be developed**

[11] The Court heard submissions from Mr Forrest on behalf of the appellant. As we have already indicated, in the light of these submissions and having taken instructions Ms Smith, on behalf of the respondent, conceded that the appeal should be allowed and accordingly, in terms of section 14(2)(a) and (b) of the 2007 Act, the decision of the UT should be set aside and the case remitted to the UT with directions for its reconsideration. Ms Smith's concession went no further. We understood that she took the view that the argument which had been presented by Mr Forrest had gone beyond what had been foreshadowed in the note of appeal and that, on the basis of the materials available to her, she could not responsibly take a position on all the matters which appeared to concern the Court. We proceeded as Ms Smith had proposed. Although not encouraged to do so by Ms Smith we see it as appropriate and perhaps helpful to indicate the nature of our concerns in relation to the decision-making by the UT and FTT. In doing so we acknowledge, as Ms Smith reminded us, that we did not hear submissions from her and therefore are not in a position to come to a final decision. As we have said, the UT should not feel bound by what we have to say. It may, however, wish to give it consideration.

[12] A person claiming asylum or other form of international protection may demonstrate that he is at risk of persecution or other relevant harm in one part of his country of origin. It will not necessarily follow that he will face such risk in another part of that country. In such a case the question will arise as to whether, on being returned to that country, it is reasonable to expect him to relocate to a safer area. In *AH and others (Sudan) v Secretary of State for the Home Department* [2008] 1 AC 678 at para 5 Lord Bingham, referring to what he had said in *Januzi v Secretary of State for the Home Department* [2006] 2AC 426 about the correct approach to the problem of internal location, said this:

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department* [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts.”

In the present case the FTT found that the appellant was a Kurd from Kirkuk. It accepted that, by reason of his work as a journalist, the appellant would be at risk of relevant harm from certain elements in Kirkuk should he be required to return there but that this would be avoided if, having been flown to Baghdad, he relocated to the IKR. It accordingly became relevant, with a view to determining whether it would be reasonable to expect him to relocate or, alternatively, unduly harsh, to consider on the basis of the available evidence whether there were practical difficulties which would face the appellant were he to attempt to establish himself in the IKR and, if so what they were and how easily (or otherwise) they might be surmounted.

[13] The practical difficulty raised by the appellant in his grounds of appeal to the UT was his lack of necessary documentation of his identity. The grounds of appeal refer

specifically to the need for documentation for the purposes of internal travel in Iraq. The grounds of appeal to this court are less specific but it is understandable if they were understood by the respondent's representatives as referring only to documentation for the purposes of travel. However, one does not need to look very far in the available information in order to see that whether a person, particularly a displaced person such as the appellant, has the necessary documentation, impacts not only on the practicality of travel but also on the possibility of securing employment and accommodation, and the availability of State assistance. These are all obviously very relevant circumstances in determining whether it is reasonable to return the appellant to Baghdad with a view to him being relocated to the IKR.

[14] When we refer to the available information we mean the general information as to conditions in Iraq as expressed in the country guidance cases which are current from time to time and the respondent's *Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns* in its version 8.0 of October 2018. As is familiar, until expressly superseded or replaced, a reported decision of the UT bearing the letters "CG" is to be treated as an authoritative finding on the country guidance issue identified in the decision. Failure on the part of the FTT or UT to follow country guidance may amount to an error of law.

[15] As at the date of the UT decision of 7 September 2017 the relevant country guidance was to be found set out in *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 (IAC), as revised and replaced by the guidance set out in the annex to the judgment of the Court of Appeal in the same case, reported as *AA (Iraq)* [2018] 1 WLR 1083. That guidance emphasised the importance of a person (P) who had been returned to Iraq having or being able to obtain a Civil Status Identity Document ("CSID"), reasonably soon after arrival in Iraq. At paragraph 9 of the guidance there is this:

- “9. ...A CSID is generally required in order for an Iraqi to access financial assistance from the authorities: employment; education; housing; and medical treatment. If P shows that there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P’s return have been exhausted, it reasonably likely that P will still have no CSID.”

What is required to obtain a CSID is addressed at paragraphs 10 and 11 of the guidance:

- “10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P’s home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P’s ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P’s information (and that of P’s family). P’s ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.
11. P’s ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P’s Governorate because it is in an area where [“serious harm” as is defined in article 15 (c) of Council Directive 2004/83/EC (the Qualifications Directive)] is occurring. ...There is however a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.”

[16] When refusing leave to appeal to this Court the UT referred to paragraphs 17 to 21 of the annex to *AA (Iraq)*. These paragraphs are headed “Iraqi Kurdish region”. They address the requirement for documentation for travel to the IKR but they include this:

- “17. The [Secretary of State] will only return P to the IKR if P originates from the IKR and P’s identity has been ‘pre-cleared’ with the IKR authorities. ...
- ...
20. Whether [a Kurd (K)] if returned to the IKR, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city will be fact-sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.”



[17] In the present case when it was before the FTT and the UT, consideration of the question as to whether a requirement for relocation to the IKR would be unduly harsh, appears to have focused on the need for documentation for the purpose of travel, the assumption being that if the appellant could make his way to the IKR all would be, if not well, at least tolerable. It appeared to us that that approach is rather to ignore other difficulties (in obtaining assistance from the State and obtaining employment and perhaps accommodation) which the appellant may face consequent on inadequate documentation, coupled with the absence of immediate family support. We have in mind the importance of having a CSID and the potential difficulty of obtaining it, particularly where the appellant would be at risk in his home Governorate and may be unable to enlist family assistance. The FTT assumed that the appellant would be able to obtain employment in the IKR. Clearly that is of importance if the appellant is to be taken to be likely to be able to support himself in an area where he would appear to have no family, and therefore no help from that quarter. Because the ability to secure employment is important the question arises as to what documentation might be required in that connection (a matter addressed in the following paragraph of this Note under reference to the now current country guidance). This would seem to point to a need to make enquiry about a number of matters before it could be concluded that requiring the appellant to relocate to the IKR would not be unduly harsh. That enquiry might begin, but not necessarily end, with consideration of how likely it is that the appellant will be able to acquire a CSID.

[18] Thus far we have referred to the country guidance current at the date of the UT decision of 7 September 2017. Sections C and E of that guidance has since been replaced by what is set out in *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 00212 (IAC). It is that guidance, as we understand matters, that would be relevant to any further

consideration of the appellant's claim. We do not intend to go into the detail of what appears in *AAH*. It is sufficient to note that possession of a valid CSID or Iraqi passport is stated to be necessary for travel from Baghdad to the IKR, and that a displaced person cannot work without a CSID. We also note that for those without the assistance of family in the IKR, and there is no suggestion that the appellant has family there, the accommodation options are limited.

[19] We have mentioned the respondent's *Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns* in its version 8.0 of October 2018. We note the terms of the copy of the letter from the Iraqi Ambassador dated 5 September 2018 which is to be found at Annex A but have not noted or been referred to anything in the Information Note which seeks to challenge the guidance in *AAH*.