



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

Appeal Number: IA/05714/2012

THE IMMIGRATION ACTS

**Heard at North Shields
On 8 October 2013**

**Determination Promulgated
On 11 October 2013**

Before

**Upper Tribunal Judge Southern
Upper Tribunal Judge Coker**

Between

NAJEM EZAD AZIZ ALHAMAL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Soltani instructed by IRIS Law.
For the Respondent: Mr M. Diwnycz, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 17 July 1972, is a citizen of Iraq. His immigration history and the not inconsiderable history of proceedings that have resulted from the initial refusal of his claim for asylum in October 2005 is well known to the parties and there is no need for us to set it out in this determination. In this appeal we are concerned with a decision of the First-tier Tribunal made by a panel comprising First-tier Tribunal Judge Trotter and a non-legal member, Mrs E. Morton who, by a determination promulgated on 7 June 2002, dismissed the appellant's appeal against a decision of the respondent, made on 16 February 2012, to refuse to revoke a deportation order. The appellant was liable to deportation as a result of a recommendation for deportation made by a Crown Court judge in February 2006 when sentencing the appellant to a term of imprisonment for an offence involving

his use of a false passport. Permission to appeal was granted on 10 August 2012 by an Upper Tribunal Judge who said:

“The panel does not appear to have determined the issue before it. The appeal was against a refusal to revoke a deportation order, but there is no reference to that in the conclusions of the Tribunal.”

2. It is readily apparent that the First-tier Tribunal did indeed make an error of law. They were required by section 86(2) of the Nationality, Immigration and Asylum Act 2002 to determine each ground of appeal raised but, in doing so by purporting to dismiss the appeal on asylum, humanitarian protection and human rights grounds, they appeared to have overlooked the fact that the appeal before them was against the decision to refuse to revoke a deportation order and not simply against the rejection of the asylum, human rights or humanitarian protection claim. Because of that oversight they failed to deal with the challenge to the immigration decision that was in fact the focus of the appeal, although it may be thought that, given their findings in respect of the case raised by the appellant in his attempt to defeat the deportation decision, there could have been only one outcome had they addressed the question they should have engaged with.
3. On 19 September 2012 a review was carried out by Upper Tribunal Judge Spencer who decided that the decision of the First-tier Tribunal, as expressed, did indeed disclose an error of law so that it should be set aside and re-made by the Upper Tribunal. It is important to appreciate that in so doing Judge Spencer was not setting aside the determination as a whole, simply the legally flawed and incorrectly articulated decision as it was expressed at the conclusion of that determination.
4. This was recognised by Upper Tribunal Coker who, having heard submissions from both parties at a case management hearing on 12 February 2012, gave the following directions:

“Although the decision of the First-tier Tribunal panel of Judge Trotter and [Mrs Morton] has been set aside, there is no challenge to the factual findings made which are, it was agreed before me, as follows:

- a. The appellant is not a Ba’athist sympathiser
 - b. The appellant has not been the subject of attack by his girlfriend’s relatives
 - c. The appellant has not been the subject of attack by the security forces
 - d. The appellant is a Christian
 - e. The appellant had no problems in relation to his Christianity prior to his leaving Iraq
 - f. The appellant had no overt Christian activity in Iraq
 - g. The appellant had no profile in Iraq that would cause him to be targeted.”
5. And so the matter comes before us now. Although we keep in mind the provisions of the applicable immigration rule concerning the approach to an application for revocation of a deportation order, we are grateful to Mr Diwynicz for the respondent and Ms Soltani for the appellant for narrowing the issues that we must address in the context of this particular appeal. The determinative issue in this appeal is whether the appellant can safely re-establish himself on return to Iraq not in his previous home area near Mosul, but in the KRG.

6. For the avoidance of any possible doubt we record that there is no claim before us on grounds concerning article 8 of the ECHR. The First-tier Tribunal judge observed in his determination that the appellant's representative:

"... specifically disclaimed any reliance on Article 8 European Convention on Human Rights and made no submissions on humanitarian protection"

And the position is no different before us, Ms Soltani, quite properly and realistically, takes no point in this regard either.

7. It is common ground and agreed between the parties that, given the country evidence now available, as a Christian, the appellant cannot safely return to live in his home area near Mosul, even though his father continues to live in that area together with his wife without experiencing any reported difficulty other than his own declining state of health. Nor can he relocate anywhere in central or southern Iraq as throughout the country there are sufficient difficulties being experienced by Iraqi Christians as to make such relocation unreasonable.
8. It is, though, also agreed that the appellant would face no real risk of persecutory ill-treatment or of being subjected to any other difficulty such as to require the grant of international protection if he re-establishes himself within any of the three governants of the Kurdish Regional Government ("KRG"). That was, perhaps, the only rational position to adopt in the light of the conclusions set out in the expert report commissioned by the appellant's representatives for this hearing from Dr George, whose opinion upon country conditions in Iraq are deservedly to be treated with respect:

"165. In my opinion, if returned to Iraq Mr Najem Alhamal would be at real risk in central and southern parts of the country because of his Christian religio-political identity. Also in central and southern Iraq he would face a risk of being kidnapped because of the perception that Iraqis who have spent considerable amounts of time in the West must be wealthy. He would also face more general risks as a result of the widespread violence in Iraq.

166. I do not consider that internal flight within central/southern Iraq to be a viable option for Mr Alhamal. The Baghdad based authorities would be unable and/or unwilling to extend him effective protection.

167. I consider it highly likely that he would be able to relocate permanently to the KRG, where the local authorities would be able to protect him.

168. In my opinion, the risks that Mr Alhamal would face as a Christian and from the general violence would be real. In my view, he would presently face only low risks as a returnee from abroad."

9. But, there are two issues raised by Ms Soltani on the appellant's behalf: First, assuming that the appellant could make his way to the point of entry to the KRG, would he in fact be admitted, being a person who had not previously resided there and having no family or social links with the area? Second, could he travel to the KRG without encountering on his journey to that area a level of risk such as to make it unlawful to require him to attempt to do so?

10. The second of those issues, concerned with the risks associated with a journey within Iraq to the point of attempted entry to the KRG can be broken down in to a series of constituent parts:
 - a. The evidence established that it is now open to the appellant to take a direct flight from Gatwick airport to Sulaymaniyah within the KRG. However, such a route is open only to those who are willing to return voluntarily. This appellant has made plain that he has no intention of doing so, as he wishes to resist removal and remain in the United Kingdom;
 - b. If the appellant declines to make a voluntary departure from the United Kingdom on a direct flight to the KRG he will be removed to Baghdad. His onward journey to the KRG could, if he chose, involve taking a flight to the KRG without leaving Baghdad airport provided he is in possession of the documentation that would need to be presented in order to be admitted to the KRG.
 - c. If the appellant needs to obtain such documentation, or to make other enquiries or put in place any other arrangements to facilitate his entry into the KRG, it may be that would have to be done in his home area, which may involve a stay of some weeks or even months while he deals with those matters, unless it can be established that the appellant could secure that documentation and make those arrangements before his departure. We will examine this issue in more detail below.

Would the appellant be admitted to the KRG?

11. The first question we address is whether the appellant, presenting himself at the point of entry to the KRG would be admitted. His request for entry would be assessed on the basis that he was a single Arab male claiming to be a Christian, but who had not previously lived in the KRG and who had no relatives there either. Dr George made clear that there would be a two-stage process. Even though the appellant would be seeking permission to settle within the KRG he would first have to apply for entry for 30 days as a visitor and, if admitted, would subsequently make an application for permanent residence from within the KRG. There are two issues likely to arise in the case of someone such as the appellant seeking entry, he having no family links with the KRG, those being whether he has the required documentation and sponsorship.
12. Dealing first with the question of documentation, in the case of this appellant that presents no difficulty. As Dr George confirmed in his oral evidence, the two crucial documents are the Civil Status Identity Document, usually referred to as a CSID, and the Iraqi Nationality Certificate. The appellant has both of these and photocopies were produced to us.
13. During the course of the hearing before us two issues were raised in respect of these documents. First, where were the originals? Second, were these genuine documents?

14. It is unambiguously clear and agreed between the parties that the appellant was in possession of the original documents, passed them to his then representatives, the North of England Refugee Service, who obtained a translation of the content of the documents and sent them, with the translations, to the Home Office. Mr Diwnycz looked through the substantial file that had been provided to him for the hearing but was unable to find those documents on the file.
15. We do not accept from that alone that the original documents have been lost and so cannot be returned to the appellant. It seems to us reasonable to assume that important and original documents of identity such as these would be kept safe by the Secretary of State after having requested that they be submitted. The fact that Mr Diwnycz's look through his court file did not produce these original documents is an insufficient basis to conclude that they have probably been lost.
16. If we are wrong about that, the photocopy available discloses all the information that is required in order to support a request to the Iraqi Embassy here for duplicates to be issued. Even if there were any problem with doing so from the United Kingdom, the appellant's father remains available to make such an application on the appellant's behalf in his home area and to arrange for those replacement documents to be sent here. We are confident about that because the evidence before us discloses no requirement for the appellant to be personally present to make such an application and as he managed to obtain a certificate of baptism from Mosul in December 2007, it is plain that he is able to have someone locally deal with the obtaining of official documents on his behalf. See *MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)*.
17. We are satisfied that the suggestion that the documents are not genuine ones is entirely without merit and simply unarguable. This submission is based upon some comment offered by Dr George who was asked to look at the photocopy documents immediately before the hearing. He thought the documents may be problematic for two reasons. They appeared to be in the same handwriting and the serial number of one of them did not have the sharp or crisp appearance one would expect from the type of printing process usually employed to produce those documents.
18. When asked about this in oral evidence Dr George was at pains to point out that he was not a handwriting expert; would not wish to offer an opinion upon the authenticity of the documents without seeing the original and without having the opportunity to examine them under magnification. He said also that the document about which he expressed concern because of the serial number was produced at a time when Iraq was subjected to heavy trade sanctions, the consequence of which was that the quality of documents being produced would be variable. When one adds to this the fact that the appellant, who is best placed to say whether or not the documents are genuine because it was he who obtained them before leaving Iraq, has never suggested that they are not genuine, we are driven to the conclusion that there is no sufficient, rational or reasonable basis upon which to doubt that the documents are indeed genuine ones and would be accepted as such by the KRG authorities.

19. Thus, having established that the appellant has the Iraqi identity documents that he would be required to produce, the next question is whether he would be able to satisfy the other requirements of the KRG authorities for admission. It is plain from the evidence of Dr George that, generally, it would be difficult for a single Arab male with no connections with the KRG to secure admission because of concerns about possible involvement in terrorism, just as there would be difficulties, generally, for single females because of concerns about possible involvement with the sex industry. Further, his research into this uncovered conflicting evidence. At paragraph 141 of his report Dr George said this:

“I am well aware that conflicting information has been published concerning the restrictions and conditions imposed by the KRG authorities on individuals wishing to enter the KRG, whether temporarily or permanently. In particular, there have been conflicting reports as to whether persons wishing to reside permanently in the KRG require a local sponsor or guarantor. During my visit to Iraqi Kurdistan in April 2011 I attempted to clarify the position in interviews with UNHCR officials; with Shokr Yaseen Yaseen, Director of the Ministry of Interior’s Bureau of Migration and Displacement; and with the Head of the Political Department of the Security Services (*Asayish*). The information I gleaned proved to be inconsistent as that presented in published reports. In particular the Head of the Political Department of the Security Services asserted that sponsorship was *not* required any more; while the UNHCR asserted that it was still a requirement.”

Having examined that conflicting material, Dr George concluded that sponsorship was now required. This was based upon his preference for the view expressed by UNHCR in the 2012 *Guidelines* which, he noted, included this:

“Christians, especially those who fled due to targeted attacks, reportedly do not face difficulties in entering the Kurdistan Region.”

And, it *may* be that the need for sponsorship arises not on initial entry but at the time of a second application from within the KRG for permanent residence by someone who has been admitted on the initial 30 day visitors permit. In the same *Guidelines* UNHCR say:

“Persons who do not have a sponsor will not be able to regularize their continued stay and may be forced to leave.”

However, Dr George was not asked about that in his evidence and so we will carry out our assessment on the assumption that this is something the appellant would have to deal with at the point of initial entry and not only when he makes the subsequent application for permanent residence.

20. Dr George has, though, made clear in his evidence that the position for Christians seeking entry to the KRG is less demanding than for some others. At para 15 of his report:

“I would stress, meanwhile, that for Iraqi Christians from outside the KRG sponsorship is usually not as problematic as it can be for non-Christians, reflecting a political stance adopted by the KRG leadership. For Christians, a key advantage is that they can be sponsored by their churches in the KRG, rather than by individual KRG residents. This does not mean that each and every Christian automatically can relocate without hindrance to the KRG. The local authorities do require sponsorship as a condition of entry, and this requirement is applied. Generally, however, Christians – although not necessarily certain

categories of Christians, such as lone females, - can gain permanent entry to the KRG without difficulty.”

And in the following paragraph of his report, having considered the personal characteristics of this particular appellant and the problems they might otherwise present, Dr George said:

“... As a Christian, however, Mr Alhamal would be much better placed than a non –Christian (see my preceding paragraph). In my view, he would very likely be able to relocate permanently to the KRG.”

21. Dr George provided further information about this in his oral evidence. First, the KRG authorities would act upon and accept an assurance by a church within the KRG that a person seeking admission was indeed a Christian. Second, the church in the KRG would co-operate with and respond to a request from the appellant's church outside the KRG to do so in order to facilitate admission. Third, this appellant would be assisted further in that he was in possession of a baptism certificate issued by his church in Mosul.
22. Drawing together this part of the evidence we reach the following conclusions. We are satisfied that the appellant will have no difficulty in establishing that he is a Christian. He has his baptism certificate from the church in Mosul. He will be able to ask that church to provide to a church in the KRG whatever confirmation is required of that which he asserts, his father being available to liaise with the local church if that is necessary. The appellant has current regular contact with church leaders in this country. They, having been happy to provide documentary evidence of his religious belief and activity in the United Kingdom for the purposes of this appeal will, plainly, be ready to provide similar confirmation to any church in the KRG selected to act as a sponsor to support an application for admission to the KRG. There can be no doubt at all, given the evidence provided by Dr George, that the appellant will be able to identify a church in the KRG willing and able to provide the authorities with the assurances they seek in order to facilitate the appellant's admission. Nor can there be any doubt, given Dr George's evidence, that the authorities would accept and act upon such church sponsorship, regarding it as equivalent to a sponsorship or guarantee provided by an individual resident in the KRG.
23. We are satisfied also that all of these arrangements can be put in place before the appellant undertakes the journey to the KRG in order. This is important because Dr George made clear that there is an arbitrariness about the process of dealing with the official responsible for deciding whether or not to admit someone to the KRG. It is important to recognise that such arbitrariness is not to do with whether a person accepted to be a Christian should be admitted, because the evidence clearly indicates that those accepted to be Iraqi Christians will be admitted. Rather, it is to do with whether any particular official will accept that the evidence offered does establish that the individual is a Christian.
24. Thus Dr George said in his evidence that while an individual cannot resolve the whole admission process in advance, it is certainly possible to “clear much of the way” in advance by making sure that all the confirmation that might be sought is immediately available. Ideally, someone seeking admission would arrange to have

someone representing the sponsor, in the appellant's case a representative from the sponsoring church, present and available to speak to the official to avoid delays while that confirmation was sought. Alternatively, a letter should be provided from the sponsoring church so that any further enquiry would be unnecessary as the official would readily accept what was said on behalf of the church.

25. Thus, there can be no real doubt that the appellant could, if he chose to do so, take a direct flight from Gatwick airport to the KRG, having put in place arrangements to ensure that his admission for the initial 30 day period would be unproblematic and in the confident expectation that the subsequent application for permanent residence would be successful.
26. But, as we have seen, the appellant says he wishes to stay in the United Kingdom and so will not undertake such a voluntary return to the KRG area of his country of nationality even though to do so would be to eliminate any real risk that might otherwise be encountered should he be subjected to a forced or involuntary return.
27. This determined intention to frustrate what would otherwise be an unproblematic return process does not, however, defeat the appellant's proposed removal as a consequence of the deportation order now in place. That is because he has no need to expose himself to any real risk by making an unnecessary journey by road from Baghdad airport to the KRG and nor will he have any need to return to the area of his former residence where his father continues to live with his new wife. That is because there is nothing at all to require the appellant to leave the airport. He can simply take a connecting flight to the KRG from Baghdad airport. If he chooses instead to go to live in the area where he previously lived with his father and other relatives that is of course entirely a matter for him. But if he does so and if, unlike his father who has lived without difficulty in that area he does experience problems himself, that will not be because of the decision now under appeal but because he made an informed choice not to avail himself of the safe alternative option of relocation available to him.
28. Before moving on, we should deal with the appellant's evidence, found in a recent witness statement prepared for this hearing, that there is reason to believe that his father is not in fact living an unproblematic life in the area near Mosul where he has always resided. The appellant says he has a cousin, Najeeb, who lives in the United Kingdom but who visited Iraq "for a few weeks in the summer". That visit, the first for 20 years, was intended to extend to a few months but was cut short because he was unable to travel freely within Iraq. Najeeb was able to visit the appellant's father who said the conditions were very bad and the appellant should not return.
29. On the basis of our analysis, even if that were correct it would be of marginal significance because it is not necessary for the appellant to return to that area. But we do not accept this evidence to be truthful. There is no statement, letter or other written confirmation from the cousin. He certainly did not offer to provide any evidence for the hearing. The appellant has in the past made contact with his father by telephone yet made no attempt to do so after he says he heard from this cousin, about 2 ½ months ago, how the situation for his father was bad. We have no difficulty in accepting from the appellant that telephone contact with his father in Iraq can be unreliable, but we find it impossible to accept that he would not at least have

attempted to make contact with his father on hearing this news from the cousin. The fact that he did not, taken together with the failure to offer any statement or other evidence from the cousin, considered in the context of the appellant's own factual account in past appeals having been rejected as untrue, leads us to find that we cannot rely upon the truth of this assertion either.

30. We should deal also with another matter raised by the appellant. He offers two reasons why he does not wish to re-establish himself in the KRG. First because he does not speak the language and second because he will not be accepted or welcomed there. Neither reason has any merit or cogency to it. There is a not insignificant Arab Christian community in the KRG and a well-established network of churches able and willing to provide support. It has to be said that the appellant has lived for some years in this country and yet gave evidence to us with the assistance of an interpreter and so is well used to dealing with such challenges of language. The appellant's concerns about acceptance and welcome are misplaced. The evidence clearly established both that he would be admitted to the KRG and that as a Christian he would receive an appropriate welcome from a well organised structure that has accommodated the arrival of significant numbers of others who have trod the same path as the appellant is now expected to embark upon.
31. For all these reasons we conclude that the appellant has offered nothing capable of establishing any arguable challenge to the decision to refuse to revoke the deportation order now in place.
32. Finally, we recognise that the challenge before the Court of Appeal to the current country guidance case of *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)* is presently unresolved. But, having regard to the scope of the grant of permission in that case by the Court of Appeal and the nature of the issues with which we are concerned in this appeal, it is plain that has no bearing upon the determination of this appeal.

Summary of decision

The Panel of the First-tier Tribunal Judge made an error of law for the reasons given by Upper Tribunal Judge Spencer in his decision of 19 September 2012 and the decision of that panel has been set aside.

We re-make the decision by substituting a fresh decision to dismiss the appeal against the decision of the respondent to refuse to revoke a deportation order.

Signed

Upper Tribunal Judge Southern

Date: 9 October 2013