



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/08467/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On September 22, 2015**

**Decision and Reasons
Promulgated
On October 5, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR AKAM REZGAR KHEDER
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant Mr Bandegani, Counsel, instructed by Law Lane Solicitors
Respondent Mr Parkinson (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Iraq. He arrived in the United Kingdom on July 18, 2007. He claimed asylum but his claim was refused on November 16, 2007 but he was given discretionary leave due to his age. On January 29, 2008 an application was made to remain but the respondent refused this on February 1, 2010 and on February 3, 2010 a decision to remove him was made. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal was heard on July 26, 2010 but dismissed on August 1, 2010. Permission to appeal was refused on September 7, 2010. Further representations were made in January 2012 for asylum but his application was refused by the respondent

on February 10, 2014 and October 7, 2014.

2. The appellant appealed that decision on October 21, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The matter came before Judge of the First-tier Tribunal Hunter on January 5, 2015 and in a decision promulgated on February 25, 2015 the Tribunal upheld the refusal and dismissed the appellant's appeal on all grounds.
3. The appellant was granted permission to appeal on June 11, 2015 by Upper Tribunal Judge Frances. The matter came before on August 3, 2015 and at that hearing I found there had been an error in law because in its examination of internal relocation the Tribunal did not have regard to the reasonableness of relocation instead concentrating on the risk facing the appellant on relocation. I adjourned the hearing to enable both parties to submit additional evidence and I indicated that the hearing would be confined to oral submissions only.
4. At the resumed hearing both parties referred me to the recent Country Information and Guidance Iraq report: Humanitarian situation in Baghdad, the south (including Babil) and the Kurdistan Region of Iraq July 2015.
5. In considering the parties' submissions, I have taken as my starting point the following findings of fact:
 - a. The original findings made by Immigration Judge Thew in his decision promulgated on August 3, 2010 in which he rejected the appellant's claim about a relationship with a girl and concluded his asylum claim was fabricated.
 - b. He found the appellant's claim that his uncle had obtained his UK telephone to lack credibility or that there were any threats made by the girl's father.
 - c. He found the appellant's explanation for giving up his Muslim religion to lack credibility and that his claim was an attempt to bolster his asylum claim.
 - d. There was no imminent danger of Baghdad falling into IS hands.
6. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

7. Mr Tarlow relied on the most recent refusal letter dated October 7, 2010 and he also submitted that following the rejection of his factual appeal the only remaining issue was whether it was both safe and reasonable for him to be returned. He submitted there was nothing in any of the material submitted to the First-tier Tribunal or today that meant he could not be returned. Case law established there was no article 15(c) threat or article 3 claim if he were returned to Baghdad and there were facilities he could avail himself of if he were returned. Whilst there were areas, including his

own area of Kirkuk, that had been overrun by the IS forces the country evidence demonstrated that returning him to Baghdad was practical and it was neither unduly harsh or unreasonable. He invited me to dismiss the appellant's claim.

8. Mr Bandegani reminded me that the appellant had a number of factors in his favour that meant it would be unduly harsh to expect him to relocate within Iraq. The appellant was a Sunni Muslim, non-Arab speaker, undocumented, with no family or support in Baghdad and who had been absent from Iraq for eight years. It was both unreasonable and unduly harsh to expect him to return to Baghdad-a Shia city that continued to experience sectarian violence. Whilst case law and the Country reports suggested that he could be returned to the country where the UNHCR could help with his documents it was clear from the July 2015 report that Iraq was suffering from a humanitarian crisis. The country evidence painted the situation as dire and he referred me to paragraphs 2.4.2, 2.4.3, 7.1.1-7.1.3 and 7.1.8 of the July 2015 report as evidence. There was evidence in the appellant's bundle (pages 30-31) of attacks on Sunni Muslims by Shia Muslims and whilst the level of violence did not reach article 15(c) levels or article 3 ECHR he would be extremely vulnerable, if returned, as a displaced person. It was unreasonable to expect him to return to Baghdad and to live in dire circumstances whilst he tried to secure employment and documents to enable him to fly to the KRI area. His appeal should be allowed.
9. I reserved my decision.

DISCUSSION AND REASONS ON ERROR IN LAW

10. The appellant came to the United Kingdom in July 2007 and two applications for asylum had been rejected. When this matter came before me on August 3, 2015 I found an error in law but made it clear following that hearing that the only issues that concerned be for today was whether it was both reasonable and safe for the appellant to be returned to Baghdad. His asylum claim had been rejected by two Judges and I have heard nothing today that would alter that situation save I accept that he would be at risk if he asked to return to Kirkuk-a city that he had been living in.
11. The reason he would be at risk is not because of the account he has put forward but quite simply because IS forces presently control Kirkuk and he would face a real risk of persecution if he were returned there.
12. The issue is whether it would be reasonable and safe to expect him to relocate.
13. General principles under the Immigration Rules/Qualification Directive. Paragraph 3390 of the Immigration Rules, which is intended to incorporate the Directive, states:
 - (i) The Secretary of State will not make:

(a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

14. In SSHD v AH (Sudan) and Others [2007] UKHL 49 the House of Lords pointed out that the test to determine whether internal relocation was available was the test set out in Januzi v SSHD [2006] UKHL 5, namely that the decision maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his or her country it would be reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him or her to do so. The test was one of great generality. In applying the test enquiry had to be directed to the situation of the particular claimant; very little was excluded from consideration other than the standard of rights protection which a claimant would enjoy in the country where refuge was sought. Baroness Hale said that all the circumstances of the case had to be assessed holistically, with specific reference to personal circumstances including past persecution or fear thereof, psychological or health conditions, family and social situations, and survival capacities, in the context of the conditions in the place of relocation, including basic human rights, security and socio economic conditions, and access to health care facilities: all with a view to determining the impact on the claimant of settling in the proposed place of relocation and whether the claimant could live a relatively normal life without undue hardship. The House of Lords said that it was not a correct application of the test to only focus on the comparison between conditions in a claimant's home country as a whole and those prevailing in the proposed area of relocation. Nor was it correct to only compare conditions in the place of habitual residence from which a claimant had fled and those in the safe haven. It was an incorrect formulation of the test to equate unreasonable or unduly harsh conditions in the place of intended relocation with a real risk of inhuman or degrading treatment or punishment within the meaning of Article 3 of the ECHR.
15. Mr Bandegani has quite properly highlighted the factors I should have regard to and both representatives agreed that in assessing the

appellant's case I had to have regard to the appellant's personal circumstances as well as the country evidence.

16. Nothing presented by Mr Bandegani persuades me that the appellant's case would be any different to a similar aged Sunni Muslim being returned to Baghdad in similar circumstances. His asylum claim, as presented, has been rejected by two Judges and I must therefore consider his claim against that background.
17. The appellant's representatives were given an opportunity to update the country evidence but save for the July 2015 nothing additional has been submitted.
18. The evidence in the First-tier bundle dates back to a period before December 2014. Mr Bandegani referred me to an article in the bundle on pages 30/31 albeit this article dates back to November 2014. Pages 38 to 89 contain material on the risks in Baghdad. Whilst these articles identify problems in Baghdad I remind myself that the Tribunal in HM and Others (Article 15(c) Iraq CG [2012] UKUT 409 confirms that the level of violence does not invoke article 15(c) or article 3 ECHR.
19. On page 44 of the bundle there is an article about an incident in October 2014 when ISIS forces killed 30 men in western Iraq albeit these incidents did not specifically involve attacks on Sunni Muslims or occur in Baghdad itself. The concerns over the advance of ISIS forces is reflected in the bundle but the articles are now over 12 months old and the position remains that ISIS forces are not the predominant force in Baghdad itself.
20. It is clear from the various reports that Baghdad is divided into Sunni and Shia neighbourhoods and there are articles on pages 52- 65 of the appellant's bundle (June to October 2014) describing Shia militia attacks on Sunni civilians partly in revenge for ISIS attacks carried out on the Shia militia.
21. The Country Information and Guidance Iraq Report April 2015: Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI) updated the position facing people in Baghdad. This report confirms Baghdad is 80% Shia but although there are clearly ongoing problems between the Shia and Sunni groups the level of violence has not reached a level that would engage either article 15(c) or article 3 ECHR.
22. The Country Information and Guidance Report for Iraq dated 24 December 2014 provided further evidence that updated the Tribunal decision of HM and confirms that it is not unreasonable to expect a Sunni Muslim with no notable risk factors to return to Baghdad-

Paragraph 1.3.63-"However since these determinations were promulgated, Iraq has experienced significant civil unrest and displacement, following widespread territorial losses to non-state armed groups, notably ISIL. To consider the reasonableness of internal relocation, decision makers must

refer to the latest country facts and guidance. Decision makers are reminded to refer to the very latest country information available. See Annex O: Sources of Country of Origin Information (COI)"

Paragraph 1.3.66-"In particular reports have shown that Baghdad has become less ethnically and religiously diverse, with fewer 'mixed sect' or Sunni areas. This may explain why in Baghdad IDPs are concerned that the hospitality of the host community will not last long, raising doubts as to whether Baghdad presents a durable option for relocation."

Paragraph 1.3.67-"Nonetheless Baghdad has for decades been an attractive destination for those seeking refuge because of its close proximity to conflict areas, the lower costs of living compared to KRI, and because it has sizeable Shia and Sunni IDP populations. At the end of October 2014 there were 127,446 IDPs residing in Baghdad. According to IOM a significant majority of IDPs in Baghdad were Arab Sunnis."

Para 1.3.75-"Sectarian factors should be considered by decision makers when assessing relocation to Baghdad and to the south however in general Arab Sunnis; Kurds and Shias will be able to relocate to Baghdad, where it is noted there is a sizable Arab Sunni IDP population."

Paragraph 1.3.7-"There is no evidence to demonstrate returnees would be unable to travel through checkpoints following their arrival into ... Baghdad International Airport. Returnees may also be able to reacquire documents from family or friends on arrival."

23. The importance of the December 2014 report cannot be overlooked because it reports on the position as at the last hearing. In other words, despite the problems facing Sunni Muslims they are able to relocate to Baghdad. Mr Bandegani referred me to the fact he would be a displaced Sunni Muslim with no family but these arguments were rejected in the December 2014. Based on the evidence available at the original hearing I am satisfied it would have been both reasonable and practicable for the appellant to be returned to Baghdad.
24. The issue is for me is whether circumstances have worsened to such an extent that the position has changed so that it would be unpractical and unduly harsh for the appellant to be returned to Baghdad.
25. There is nothing in the April 2015 report that alters the above position but Mr Bandegani invited me to find that the July 2015 report demonstrated the position was now worse for this appellant.
26. At paragraph 2.4.1 the report states-
"Iraq continues to have a functioning economy despite

having been in an ongoing state of civil instability since 2003. This instability has impacted on the standard of living generally. Unemployment is at 11 per cent and economic growth over recent years has been significantly compromised by the latest civil unrest over 2014 and into 2015. The International Monetary Fund projects growth at 1.3 per cent for 2015, although indicative figures suggest this will grow in future years. Gross Domestic Product for 2013 was US\$229.3bn, with a Gross National Income (GNI) per capita of US\$6,720 in 2013, leading the World Bank to categorise Iraq's income level as 'upper middle income'. The majority of jobs in the country are provided by the state, 45 per cent in urban areas and 28 per cent in rural parts of the country. The ISIL insurgency has not halted the expansion of the oil sector with exports expected to rise from 2.5 million barrels per day (mbpd) in 2014 to 3.1 mbpd in 2015."

27. At paragraph 2.4.2 the report recognised the humanitarian situation had deteriorated with Iraq being categorised as a level 3 emergency with over 400,000 civilians displaced to Baghdad with the conditions facing IDPs varying considerably depending on the social and economic connections of the persons displaced. The report makes clear that there should be a consideration of the person's ability to cater for his or her most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame and whether he or she would become an IDP.
28. This appellant would be an IDP because he comes from a contested area and therefore unable to return to his home owing to a well-founded fear of persecution of the general security situation.
29. However, the report concludes at paragraph 2.1.1 (found after paragraph 2.4.6) by stating-

"Though the humanitarian situation has deteriorated across Iraq, in general the situation is not so severe in the non-contested areas as to make a removal to Baghdad, the southern governorates, or the KRI a breach of Article 3."
30. The appellant has family, albeit living in contested areas, and according to his own evidence he remains in contact with his family so recourse to some financial assistance is reasonably likely to be available for this appellant.
31. The appellant is undocumented and the July 2015 report states at paragraph 2.4.9-

"Decision makers must also take into account whether a person can regularise their documents, particularly for those persons not from Baghdad, the southern governorates or the KRI. This will be significant both for employment and in order

to allow a person to relocate and reside in a new place of residence, including with relatives/family.”

32. In MK (documents-relocation) Iraq CG [2012] UKUT 126 (IAC) the Tribunal stated-

(1) the lack of documentation relating to identity in the form of the Civil Status ID (CSID), Iraqi Nationality Certificate (INC) and Public Distribution System (PDS) card (food ration card) is not ordinarily an insuperable problem, it is not a factor likely to make return to any part of Iraq unsafe or unreasonable.

(2) Although the general position is that a person who wishes to replace a lost CSID is required to return to their home area in order to do so, there are procedures which make it possible (i) for Iraqis abroad to secure the issue of a new CSID to them through the offices of the local Iraqi Embassy; (ii) for Iraqis returned to Iraq without a CSID to obtain one without necessarily having to travel to their home area. Such procedures permit family members to obtain such documentation from their home areas on an applicant's behalf or allow for a person to be given a power of attorney to obtain the same. Those who are unable immediately to establish their identity can ordinarily obtain documentation by being presented before a judge from the Civil Status Court, so as to facilitate return to their place of origin.

33. The absence of documents will not necessarily lead to the granting of asylum or any other relief because there are procedures in place that enable persons with no documents to either obtain them before they are returned or alternatively to obtain them from family members who live in the KRI. There is no evidence that the ongoing fighting will prevent the appellant obtaining the required evidence to enable him to return to the KRI.

34. Mr Bandegani accepted the circumstances did not breach the relevant threshold for either article 15(c) or article 2 or 3 ECHR.

35. Accordingly, having considered all of the written evidence and the oral submissions I am satisfied it would be reasonable to expect the claimant to relocate to Baghdad and it would not be unduly harsh to expect him to do so.

DECISION

36. There was a material error and I set aside the earlier decisions save the decision under article 8 ECHR which was unchallenged.

37. I have remade the decisions and dismiss the appellant's claims for asylum, humanitarian protection and under articles 2 and 3 ECHR.

38. I uphold the Tribunal's decision in respect of article 8 ECHR.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis