



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

Appeal Number: PA/01894/2016

**Heard at Manchester  
on 10 October 2017**

**Decision promulgated  
on 23 November 2017**

**THE IMMIGRATION ACTS**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**[S A]**

(anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Dr Mynott instructed by Immigration Advice Service.  
For the Respondent: Mr C Bates- Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Lloyd-Smith promulgated on 13 April 2017 in which the Judge dismissed the appeal on both protection and human rights grounds.

## **Background**

2. The appellant, a citizen of Iraq, was born on [ ] 1981. His daughter, born in [ ] 2007, is a dependent in his claim. On 11 February 2016, the Secretary of State refused the appellants claim for international protection and/or leave to remain on human rights grounds against which the appellant appealed to the First-tier Tribunal.
3. At [8] the Judge summarises the relevant history in the following terms:
  - (i) The appellant is an Iraqi Kurd who lived in Sulaymaniyah.
  - (ii) The appellant married in 1998/9 to a woman with whom he had four children.
  - (iii) The appellant also married a second lady in 2006 with whom he has three children, the daughter who is dependent on his claim being one of those children.
  - (iv) In 2009 the appellant discovered that his first wife was having an affair with his friend. The couple agreed they would separate but kept the reason secret as they knew the discovery of the affair would cause shame to the tribal family. The appellant stated it was agreed that the appellant's first wife would ask for a divorce so he could keep the children.
  - (v) The divorce was granted on 15 July 2009. Two days after that the appellant's first wife was killed by her brothers because they had learnt about her affair and it was therefore an honour crime.
  - (vi) On hearing of the death, the appellant moved his family to a neighbour's address. He stated he saw his ex-wife's family kick the front door of their home in looking for him. His friend asked what they were doing and they told him they wanted to kill the appellant.
  - (vii) The family moved to another location, to a house found for them by a Colonel [J] a friend of the appellant's friend referred to above.
  - (viii) At the end of May 2014, the appellant's second wife's uncle died. The second wife took five of her children to Mosul to attend the funeral although the appellant and the daughter he has with him remained in their home as the daughter was not well.
  - (ix) ISIS entered their home town on 9 July 2014 after which the appellant moved on 12 July 2014 to Baghdad where they lived with Colonel [J] and where they remained for 5 to 6 months before making arrangements to flee the country.
  - (x) The appellant claimed that his wife and children were unable to leave Mosul. The appellant stated he had not heard from his wife since she left for Mosul but had heard that her father died eight months before his substantive asylum interview.
4. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out the analysis at [15 - 32] of the decision under challenge.
5. It is recorded that it is not disputed that the appellant is an Iraqi national who lived in a contested area of Iraq but thereafter the Judge gives a number of reasons in support of a finding that the appellant's account is rejected and in relation to adverse credibility issues. The Judge accepted the appellant has a genuine subjective fear of return to his home area but did not find such fear to be objectively well-founded.
6. The Secretary of State's position in the reasons for refusal letter was that the appellant could return to the IKR or to Baghdad where he had

lived prior to leaving the country, which the appellant states is not feasible as he was asked to find a sponsor in Baghdad previously but could not find one.

7. The Judge refers to the relevant country guidance case of AA before concluding that the appellant could return to Baghdad [22].
8. At [23] the Judge notes that the respondent raised as an option the appellants return to the IKR. It is noted that the appellant is from Sulaymaniyah and that his sister in law lives there currently. It was acknowledged that his identity would have to be pre-cleared with the IKR authorities but the country guidance case shows there is not a risk to ordinary citizens in that area and it would not be unreasonable to expect the appellant to return to Baghdad or the IKR meaning he will not qualify for a grant of international protection.
9. The appellant sought permission to appeal which was granted by another judge the First-tier Tribunal.
10. The application is opposed by the Secretary of State.

### **Error of law**

11. The first ground relied on by Dr Mynott is an assertion the Judge failed to consider a diagnosis that had been provided confirming the appellant was suffering from mixed anxiety with depression, psychosis, and PTSD in the assessment of the credibility of the appellant. It is accepted by the appellant that the Judge considered that evidence and there is specific reference to it in the decision under challenge. It was argued on the appellant's behalf that there was no consideration by the Judge of the potential impact of PTSD upon those elements of the evidence the Judge found to lack credibility.
12. It was also conceded on the appellant's behalf that he was unable to pursue the ground of appeal relating to the ability of the appellant to obtain a CSID as a copy of this document was in the evidence before the Judge.
13. The appellant disputed the Judge's finding that he could return to Baghdad as the previous support provided to him by Colonel [J] was no longer available as a source of further support. Other family members were not available in Baghdad.
14. The appellant also asserted the Judge erred as he is a follower of the Sunni sect of Islam. It is said the Judge erred when failing to consider the reasonableness of internal relocation in relation to which Dr Mynott make specific reference to the decision of the Upper Tribunal in *BA*.
15. The ability to internally relocate was considered at length in the country guidance case of *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* (unchanged by the Court of Appeal) in which it was held that (i) As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to comments in this case on humanitarian protection and areas of the country where there is an internal armed conflict) the Baghdad Belts; (ii) In assessing whether it would be unreasonable/unduly harsh for

and Iraqi national (P) to relocate to Baghdad, the following factors are, however, likely to be relevant: (a) whether P has a CSID or will be able to obtain one (comments in this Chapter, this section, section on Iraq generally and returns); (b) whether P can speak Arabic (those who cannot are less likely to find employment); (c) whether P has family members or friends in Baghdad able to accommodate him; (d) whether P is a lone female (women face greater difficulties than men in finding employment); (e) whether P can find a sponsor to access a hotel room or rent accommodation; (f) whether P is from a minority community; (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs. (iii) there is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

16. The Upper Tribunal in *BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC)* held that (i) The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)*. (ii) The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq. (iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator. (iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone. (v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is

not sufficient to give rise to a real risk of serious harm. (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case. (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.

17. In relation to the finding of a further available option of internal relocation to the IKR, it was submitted that this was raised in the refusal letter it did not form part of the case and that Judge did not find that the appellant is from Sulaimaniyah. It was also argued that the appellant would have to return to Baghdad which requires consideration of how the appellant will be able to travel to the IKR. It is argued that this matter was not adequately considered.
18. The point in relation to the Judge's treatment of the evidence, in light of the medical evidence, has not been shown to give rise to arguable legal error. The report was clearly taken into account by the Judge but that report did not show that the appellant would have any problems giving evidence both in terms of attending before the Tribunal, engaging in appeal proceedings, or in his recollection of events. A reading of the determination does not demonstrate that any such problems were encountered.
19. It also is correct, as indicated by Mr Bates, that the psychosis and PTSD diagnosis is not described in relation to a scale of severity which is of importance. Somebody who suffers mild psychosis or mild PTSD is likely to be more able to go about their business in a normal manner than somebody who suffers at a more severe level.
20. It is also of note from the decision under challenge that a lot of the discrepancies identified by the Judge refer to documentation and the comparison between that and what was said in the witness statements. No problem was identified with the content of the witness statements which were adopted, or the oral evidence given.
21. It is also not made out that the Judge treated the appellant in an inappropriate manner in light of the diagnoses in relation to the way in which the proceedings were conducted or the appellant gave his evidence. I find the appellant has failed to establish or make out his argument that his health conditions provide an explanation for evidential deficiencies. The Judge's assessment of the credibility of the account is not undermined by the medical material. The weight to be given to the evidence was a matter for the Judge.
22. In relation to the issue of internal flight, the reasons for refusal letter at paragraphs 41 - 42 raise the issue of internal relocation to either Baghdad or the IKR. This is therefore not a new issue but a matter of which the appellant was aware from receipt of the refusal letter.
23. The focus of the decision under challenge relates to return to Baghdad but even if a Kurd had to initially arrive in Iraq through Baghdad he could always choose to relocate to the IKR.

24. The Judge was aware the appellant was a member of the Sunni minority. The Judge noted the appellant had a friend in Baghdad who was still in Baghdad and the appellant had failed to make out that he will be subject to sectarian violence sufficient to support a finding that it was unreasonable to expect him to relocate. The Judge considered all aspects of the evidence that had been raised and the fact the appellant may not like the conclusions reached does not mean they are automatically infected by arguable legal error.
25. The claim the Judge failed to make a specific finding that the appellant was from Sulaimaniyah does not establish arguable legal error for the Judge accepted, as did all parties, that this is where the appellant was born. This was never raised as an issue nor pursued as a point of contention at the hearing. The Judge was therefore able to consider that as a person from the IKR the appellant was able to return there. The appellant is an ethnic Kurd from Sulaimaniyah who has a nationality certificate with no reason being made out before the Judge that the appellant would be denied entry. The Judge properly referred to the guidance provided in AA that only those pre-cleared by the Kurdish authorities will be permitted entry. That process is undertaken by the UK immigration authorities liaising with the IKR government, a process that can be undertaken on the appellant's behalf. If the appellant is approved for entry he will not have to go to Baghdad. The appellant failed to make out before the Judge that there was any issue that would prevent his being admitted.
26. In respect of the reasonableness of this proposal, the Judge finds that in the IKR the appellant has actual family members. In the IKR the appellant will be a member of the ethnic and religious majority as an ethnic Kurd and follower of the Sunni faith. There is also no evidence that the appellant will be at risk in the IKR.
27. As the appellant has not established this option was not open to him and the observation by the Judge has not been shown to be affected by arguable legal error, the appellant has not established any material error of law in the decision under challenge.
28. The other option considered by the Judge regarding Baghdad and onward travel to the IKR is said to be infected by legal error as a result of problems the appellant would experience within Baghdad and difficulties in facilitating safe onward travel, not that he would not be given entry to the IKR. The evidence before the Judge did not establish that this finding was not available to the Judge as financial support is available and there was no evidence that the family would not be able to assist the appellant which could ensure he has adequate funds to meet his basic needs and the cost of onward travel, in addition to the voluntary refugee package available to returnees.
29. It is relevant that the appellant has all the necessary paperwork such as his CSID which the Court Appeal when considering the Upper Tribunal decision in AA confirmed is not a document relevant to an ability to return but was relevant to enabling a person to access services within Iraq. This will ensure that the appellant will not be

abandoned or destitute and will be able to establish his identity within his home state.

- 30. It was submitted in response that the Judge's finding that the appellant is a healthy man ignores his mental health issues and the presence of his daughter but, stated above, the core finding must be the ability of the appellant to return to the IKR where his daughter will accompany him and in relation to which no credible real risk was established.
- 31. In relation to the IKR and Baghdad, the evidence does not support a claim that any treatment the appellant may require would not be available to him to assist with medical issues or that the financial support referred to by the Judge would not be so sufficient to meet the needs and requirements of both the appellant and his daughter.
- 32. No arguable legal error material to the decision to dismiss the appeal is made out. The decision shall stand.

**Decision**

- 33. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 34. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Judge of the Upper Tribunal Hanson

Dated the 17 November 2017