



**Upper Tribunal
(Immigration and Asylum Chamber)
PA026782016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 7 June 2017**

**Decision &
Promulgated
On 8 June 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**DM
ANNONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Brooks, Counsel

For the respondent: Ms Abone, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant in this decision identified as DM.

Introduction

1. In a decision dated 11 January 2017 I found that the First-tier Tribunal made errors of law regarding its assessment of prospective risk for the appellant in Iraq. It was agreed that there was no error of law in the First-tier Tribunal's factual findings and that I would remake the decision at an adjourned hearing to proceed by way of submissions only.

Hearing

2. At the beginning of the hearing there was a preliminary discussion regarding the developments in Iraq and the likely position regarding the appellant's home area of Tikrit and obtaining identity documentation for the appellant. Ms Abone specifically accepted the following matters:
 - (i) It is not possible for the appellant or his family members to reside in Tikrit, given the current country conditions;
 - (ii) The appellant's family members cannot be expected to return to Tikrit even on a temporary basis in order to assist the appellant in retrieving his passport or securing identity documents;
 - (iii) The appellant faces a real risk of serious harm in his home area of Tikrit.
3. Both representatives agreed that the real question now turns on whether or not the appellant can be expected to internally relocate to Baghdad given his particular risk factors and the factors summarised at 15 of the headnote in AA (Article 15c) Iraq CG [2015] UKUT 544 (IAC). Ms Abone accepted that the appellant does not have a CSID and would not be able to obtain one, he has no friends or family in Iraq able to accommodate him and will find it difficult to find a sponsor, and he is from the Kurdish and Sunni minority communities.
4. Both representatives agreed that I should assess internal relocation by applying the guidance in AA and BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC), together with the updated country evidence (including the SSHD's report on Iraq dated March 2017, to the following accepted facts regarding the appellant:
 - (i) Kurdish ethnicity;
 - (ii) Sunni Muslim religion;

- (iii) his father was involved with the Baath party and the regime of Saddam Hussain;
 - (iv) he worked as a police officer, based at the army base in Kirkuk from January 2014 to August 2015;
 - (v) in January 2015 he and others took photographs of dead ISIS soldiers and distributed these by Bluetooth with disparaging remarks, and he appears in one of the videos;
 - (vi) in June / July 2015 the appellant was threatened by ISIS via his mother and then in a phone call and by text;
 - (vii) on 6 August 2015 a person unknown shot at the appellant's car when he was on driving duty for the police;
 - (viii) after the shooting incident he deserted the police and went into hiding;
 - (ix) he left Iraq on 15 October 2015;
 - (x) no CSID and no ability to obtain one;
 - (xi) no friends or family in Iraq able to accommodate him and it will be difficult to find a sponsor.
5. The appellant attended the hearing and was ready and willing to give further evidence about the above matters. Ms Abone confirmed that there was no area of factual dispute that she wished to put to the appellant.
6. Ms Abone submitted that although it is not possible to return the appellant to Iraq at the present time, he would be able to reside in other parts of Iraq apart from Tikrit, Kirkuk and Baghdad. When I invited her to particularise where in Iraq the appellant would not face a real risk of serious harm, she accepted she was unable to identify any such area.
7. Mr Brooks relied upon his skeleton argument and invited me to allow the appeal. He helpfully and carefully took me through all the risk factors to support his submission that the appellant is at real risk of serious harm at the point of return in Baghdad.
8. After hearing submissions from both representatives, I reserved my decision, which I now provide with reasons.

Re-making the decision

CSID / feasibility of return

9. AA clearly states that those who do not originate from the IKR, such as this appellant, will be returned to Baghdad. Ms Abone accepted that if the appellant could be returned, he would be returned to Baghdad.
10. The appellant shall only be permitted to enter Iraq if in possession of a passport or laissez passer. The First-tier Tribunal's suggestion that the appellant could obtain a CSID by returning to Kirkuk and visiting the office there, fails to take into account that he cannot be returned to Baghdad (and then travel onwards) without the relevant documentation.
11. AA [11 of the headnote] makes it plain that it will generally be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. This is because a CSID is required to access financial assistance, employment, housing, education and medical treatment, and in the absence of family support, a lack of a CSID is in general likely to result in a real risk of destitution and serious harm.
12. Ms Abone conceded that the appellant's family members cannot be expected to return to Tikrit to assist in providing documentation and it is therefore not currently feasible to return the appellant because he does not have a CSID or a passport (he left his passport in Tikrit in 2015 when he left Iraq overland illegally).
13. In my judgment Ms Abone was correct to concede that the particular circumstances of this case and the guidance in AA at [170-186] is such that return is not feasible for this appellant. The Court of Appeal's observations when granting permission to appeal in AA v SSHD [2016] EWCA Civ 779 are not directly relevant to the facts of this case.
14. In any event, both representatives agreed that the unfeasibility of the appellant's return does not preclude his claim to international protection from succeeding if the asserted risk of harm is not solely based on factors rendering his actual return unfeasible - see [169] of AA. That a person whose return is not currently feasible may, nevertheless, still succeed in a claim to international protection, if and insofar as the claim is based on a real risk of harm, which arises otherwise than by not having the requisite documentation, was clearly anticipated by the Upper Tribunal in AA at [207]. This approach has

been applied in R (H) v SSHD (application of AA (Iraq CG) IJR [2017] UKUT 00119 (IAC) at [42-43].

Risk in home area

15. Both representatives agreed that the appellant is at real risk of serious harm in his home area for reasons relating to the generalised conflict there and an imputed political opinion. Although it appears that Tikrit is no longer controlled by ISIS, Ms Abone accepted that it is still in a state of flux and controlled by Shia militias.
16. In my judgment when all the appellant's circumstances are considered together, he is reasonably likely to be targeted by (a) the Shia militias - because of his Kurdish background, Sunni religion and desertion from the police, as well as (b) ISIS (who may not be in control but still have the capacity to target individuals) because of the following viewed cumulatively: (i) he was a policeman who had been threatened by ISIS in the past; (ii) his car had been targeted for a shooting; (iii) he had participated in an anti-ISIS video making disparaging remarks about ISIS. ISIS are likely to impute an anti-'Islamic state' opinion to the appellant.

Internal relocation to Baghdad

17. The AA headnote states the following at 15:

"In assessing whether it would be unreasonable/unduly harsh for 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;
- (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...
- (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 asylum seekers are provided with the support generally given to IDPs."

18. I am satisfied that it would be unreasonable or unduly harsh to expect the appellant to relocate in Baghdad given the risk factors identified above. He is at the "other end of the scale" identified in AA at [202] as he has no family connections in Baghdad, is from a minority

community and has no CSID. He falls within the category of people AA accepts at [203] cannot generally be expected to relocate to Baghdad, notwithstanding the limited support given to IDPs.

19. The appellant will not have access to alternate adequate support mechanisms in Baghdad. There is no viable family for him to turn to and he has no friends or contacts there. This is likely to make relocation particularly difficult in circumstances where displaced persons often find it very difficult. AA emphasises that careful consideration must be given to the ability of family members to support the appellant [197]. It is not disputed that his family reside in Kirkuk, where conflict relatively recently stopped. Their ability to support him from there is most unlikely. As set out in AA [202] those without family connections in Baghdad are more vulnerable. I am satisfied on the evidence currently available that the appellant will not have access to family members or resources to enable him to obtain accommodation in Baghdad.
20. If returned to Baghdad, he would be going there as a Kurd and a Sunni. He will therefore be in a minority community, but with no contacts within that community and unlikely to be able to obtain employment notwithstanding his ability to speak Arabic. I acknowledge that the appellant speaks Arabic as well as Kurdish. This should increase his prospects of obtaining employment in principle, but in practical terms the absence of a CSID will render this very difficult.
21. These factors must be viewed alongside other factors placing the appellant at increased risk and reasonably likely to render life in Baghdad to be precarious for him – see the BA headnote, which states:

“(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.”

22. Although the majority of Sunnis are able to lead a relatively normal life in Baghdad, it is not without risk. This appellant, a young Sunni man with no experience of Baghdad at all and no contacts there, is at increased risk of being perceived as an ISIS supporter.
23. The pertinent AA risk factors must be considered alongside the constant state of anxiety and insecurity the appellant is likely to face in the current environment, as set out in BA, because of his particular profile. This appellant is reasonably likely to face many different serious challenges as a result of his particular profile, and for this combination of reasons it is unduly harsh to expect him to relocate to Baghdad.
24. The risk of this is increased because he left the police and Iraq in order to reside in the UK. This is reasonably likely to increase his risk of kidnapping and killing in the current environment. The level of political and sectarian violence in Baghdad remains high even if it does not meet the threshold required to show a generalised risk of indiscriminate violence. The background evidence shows that checkpoints are largely manned by Shia militias, with the attendant risks and insecurity that presents for a young man with the appellant’s characteristics and history.
25. In addition to this the appellant is likely to face great anxiety that ISIS will target him again, given his activities in the past.
26. After having considered all the circumstances cumulatively I am satisfied that the appellant's individual profile is such that it would not be reasonable to return him to Baghdad. Ms Abone did not argue otherwise.

Conclusion

27. I accept that the appellant faces a real risk of persecution for reasons relating to his imputed political opinion in his home area and that he cannot internally relocate to Baghdad or any other part of Iraq.

28. In the alternative, the same factors would give rise to an enhanced individual risk for the purpose of Humanitarian Protection under Article 15(c) of the Qualification Directive or for the purposes of Article 3 of the ECHR.
29. Having made these findings there is no need for me to consider Article 8 of the ECHR.

Decision

30. The decision of the FTT contains errors of law and is set aside.
31. I remake the decision by allowing the appellant's appeal and find that his removal would breach the Refugee Convention and Article 3 of the ECHR.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

7 June 2017