Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02974/2016**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision and Reasons Promulgated**
On 12 September 2017	**On 18 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

S K
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith counsel
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 20 April 1994 and is a national of Iraq.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Herwald promulgated on 23 December 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 12 March 2016 to dismiss his protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Herwald ("the Judge") dismissed the appeal against the Respondent's decision finding that :

   (a) He accepted that the Appellant was from Kirkuk on the basis .inter alia, of his original CSID card which he produced to the court (paragraph 13 (b))

   (b) The Respondent did not produce sufficient evidence to allow him to depart from the country guidance case in relation to whether Kirkuk was a contested area (Paragraph 12(b))

   (c) He left Iraq to avoid ISIS.

   (d) The Judge did not accept that he left to avoid a risk from a tribe called the Jaff.

   (e) There was no risk to the Appellant as a result of his father's association with the Ba'ath party.

   (f) The Appellants failure to claim asylum in other safe countries adversely impacted on his credibility.

(g) It was feasible for the Appellant t be returned to Iraq as he had his original CSID card.

(h) At paragraph 19(b) the Judge considered whether it would be unduly harsh for the Appellant to internally relocate to Baghdad and found that it would not.

6. Grounds of appeal were lodged arguing: that the Judge was in error in that :

(a) He failed to direct himself appropriately in accordance with the country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) in particular paragraphs 202-203 although specifically directed to this.

(b) The Judge gave inadequate reasons for his finding that the Appellant could relocate to the IKR.

(c) The Judge gave inadequate reasons for his findings that the Appellant was not at risk from the Jaff tribe.

7. On 8 May 2017 Upper Tribunal Judge Jordan gave permission to appeal.

8. At the hearing I heard submissions from Ms Smith on behalf of the Appellant that:

(a) She had specifically referred to AA in the course of her submissions and taken the Judge to the salient paragraphs not just the headnote.

(b) In relation to the issue of relocation to Baghdad the Judge considered this at paragraph 19 and nowhere did he refer to AA.

(c) The Judge had failed to adequately address the impact of the lack of family support and the fact that the Appellant did not speak Arabic. The Judge gave no weight to the fact that the Appellant could not speak Arabic.

(d) The reference to family support in paragraphs 194-197 of AA was not a reference to family who lived in other areas of Iraq. The Appellant does not have family in Baghdad to assist him as his mother lives in Kirkuk. The Judge boldly asserts that the Appellants mother could provide financial support but this conclusion was reached without an evidential basis as that possibility had not been explored by the Respondent either in interview or in court.

(e) The Judge also fails to take into account the impact of the Appellant coming from a minority community.

(f) The Judge makes a fleeting refence to relocation to the IKR without taking into account any of the factors set out in AA as relevant to that decision.

(g) In relation to the Judges finding that the only reason the Appellant left Iraq was fear of ISIS the Appellant was clear that this was the reason he could not return to Iraq but fear of the Jaff tribe was the reason he could not relocate to the IKR.

9. On behalf of the Respondent Mr Diwnycz submitted that :

(a) He relied on the Rule 24 notice.

(b) He agreed that the comments in relation to the IKR were not a finding that he could relocate there.

(c) He accepted that AA was relevant.

The Law

10. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been

rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

12. In relation to adequacy of reasons I take into account MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Finding on Material Error

13. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.

14. The Judge accepted in this case that return of the Appellant was 'feasible' as he produced a valid original CSID card but that it would not be unreasonable for him to relocate to Baghdad. It is argued that the Judge failed to direct himself properly as to this in part because he makes no specific reference to the country guidance case of AA.

15. It is a matter of well established law that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal has previously stated in R and Others v SSHD (2005) EWCA civ 982 that it represented a failure to take a material matter into account.

16. I have considered whether therefore although the Judge makes no specific reference to 'AA' he has taken that country guidance into account in assessing whether it was not unreasonable for the Appellant to relocate to Baghdad.

17. I note that the Judge refers to taking into account the oral submissions of both representatives and taking into account the documents in the Appellants bundle and the Respondents bundle (paragraph 5) and note that

    - AA was specifically referred to in the refusal letter which forms part of the Respondents bundle and is referred to a paragraph 10(e) of the decision as 'the country guidance' when setting out the reasons for refusal.
    - The case is included in the Appellants bundle at 1-58.
    - The Judges record of proceedings contains a number of references to AA as being relied on both by the HOPO and Ms Smith.
    - In referring to the background material at paragraph 12 the Judge at sub paragraphs (a) considers whether the country guidance case should be followed in so far as it refers to Kirkuk being a contested area or whether as argued by Ms Smith (b) there was insufficient basis for him to depart from 'the country guidance case.'
    - The specifically addresses the issue of whether it was 'feasible for him to return' to Iraq at paragraph 19(a). This is a very specific term and issue which is an important factor referred to in the headnotes and throughout AA .

18. I am therefore satisfied that it cannot be reasonably be argued that the Judge was unfamiliar with the case of AA, had a copy of it before him and was referred to it in submissions by both Mr Scholes who appeared for the Respondent or Ms Smith who appeared for the Appellant.

19. It is further argued in the grounds (paragraph 6-11) and orally that the Judge has failed to adequately apply the guidance as to relocation to Baghdad particularly as summarised at paragraphs 202-203. Those paragraphs set out potential personal characteristics of someone whose return is feasible, which as indicated above the Judge considered first, suggesting there is a 'wide range of circumstances'.

20. I am satisfied that the Judge at paragraph 19(b) considered all of the relevant circumstances and gave them the weight he felt was appropriate even though he did not specifically refer to the paragraph numbers of AA relied on by Ms Smith.

Thus he acknowledged that the Appellant could not speak Arabic, had no family members or Sponsor in Bagdad and was from a minority community all factors set out in 202-3 of AA. There is nothing in the guidance that states that such a male *cannot* relocate to Bagdad given the other factors that the Judge weighed in the balance: thus the Judge took into account that the Appellant already had a CSID which is a vital tool for accessing accommodation , food and work; he noted that while the Appellant spoke Kurdish it was also spoken in Baghdad; he had previous work experience as a labourer and felt such work was likely to be available in Baghdad; he noted that the Appellant had been in constant communication with his mother since he left Iraq and she had indeed provided him with his original CSID at his request; he reached a not unreasonable conclusion rejecting his evidence to the contrary that having raised a large sum to fund his flight from Iraq and given that they were in contact while he was in the UK they were likely to remain in contact while he was in Iraq and could provide financial support.

21. I am satisfied that the Judge does not have to make specific reference to country guidance by name: in HH (Afghanistan) v SSHD [2014] EWCA Civ 569, it was held that where the Upper Tribunal had considered the risks that an asylum seeker said he would face on return to Afghanistan, its failure to refer specifically to the country guidance case enumerating those risks was not an error, or a material error, of law. I am satisfied that in this case that the Judge has applied the country guidance to which he was referred and taken into account all of the relevant factors and given clear reasons why in this Appellants circumstances it was not unreasonable for him to relocate to Baghdad.

22. In relation to the reasons given for not accepting that the Appellant was at risk from the Jaff tribe while I am satisfied that the reasons he gave were adequate given Ms Smiths argument that this related only to return to the IKR it is unnecessary for me to consider that matter further as the Appellant will be returned to Baghdad.

23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

25. **The appeal is dismissed.**

Signed Date 17.9.2017

Deputy Upper Tribunal Judge Birrell