

**Upper Tribunal
(Immigration and Asylum
Chamber)
Appeal Number:
PA/05024/2016**



THE IMMIGRATION ACTS

Heard at Stoke

On 13th September 2017

**Decision & Reasons
Promulgated
On 18th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR S A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Pratt, Counsel, WTB Solicitors LLP
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 5th April 1989. The Appellant was encountered at a truck stop in Kent on 17th September 2016 along with other irregular migrants. He claimed asylum on the same day. The Appellant's application was based upon a fear that if he returned to Iraq he would face persecution from the group referred to as Islamic State (IS) or Daesh. The Appellant's application was refused by the Secretary of State by a Notice of Refusal dated 17th March 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Shergill sitting at Manchester on 8th November 2016. In a decision and reasons promulgated on 17th November 2016 the Appellant's appeal was dismissed on protection grounds and on human rights grounds. He was however granted anonymity by the First-tier Tribunal Judge. No application is made to vary that order and the anonymity direction is maintained.

3. On 1st December 2016 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Those short grounds contended that the Immigration Judge's sole reason for dismissing the appeal was based around choosing not to apply a valid country guidance and it was submitted that this is an error of law and given that it affects the entire decision it was submitted that the decision should be set aside.
4. On 9th January 2017 Judge of the First-tier Tribunal Easterman refused permission to appeal. Judge Easterman concluded that whilst the First-tier Tribunal had found it likely to be unduly harsh for the applicant to have to remain in Baghdad in his view it was open to the judge, taking into account the country guidance to which he referred at paragraph 15, to find the applicant could successfully internally relocate without undue hardship to the IKR and that in his view the decision disclosed no arguable error of law.
5. On 26th January 2017 extended and renewed Grounds of Appeal were lodged to the Upper Tribunal. Those grounds noted that the Immigration Judge accepted that the Appellant was from a contested area of Iraq as considered in the country guidance case of *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)* and so could not be expected to return there. It was noted that the Immigration Judge had found that internal relocation for the Appellant to Baghdad would be unduly harsh but that the judge had noted that the country guidance case law stated that returnees to Iraq from outside the IKR would be returned to Baghdad and decided that this would not apply in the Appellant's case. It was submitted that this was a clear legal error in light of the country guidance in *AA* which at head note 5 states:

"Return of former residents to the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad ..."

6. It was submitted that the Immigration Judge's sole reason for dismissing the appeal was based around choosing not to apply a valid piece of country guidance and that this constitutes an error of law given that it affects the entire decision.
7. Thereinafter at paragraph 7 the Grounds of Appeal address the reason for refusing permission by Judge Easterman by submitting that those reasons did not deal at all with the point that the judge at first decision indicated that the Appellant could be returned directly to the Iraqi Kurdish Region which is in direct contradiction of the country guidance case by which the Immigration Judge should have been guided.
8. On 27th February 2015 Upper Tribunal McWilliam granted permission to appeal in a succinct set of reasons stating that it was arguable that the judge inadequately reasoned the decision that the Appellant could relocate to the IKR.
9. It was on that basis that the appeal originally came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The Secretary of State made a concession

in that it was relevant to consider the Home Office policy and how someone travelling from Baghdad would make their way back to the IKR. Both legal representatives pointed out to me that this was constantly changing in that the military activity along the whole line of the route and the objective evidence that was made available showed that the safety of the preferred route can change rapidly.

10. I found that there was a material error of law in the decision of the First-tier Judge in that all he appeared to have done was to seemingly rewrite country guidance and suggest an alternative route by which the Appellant could return to Erbil and Sulaymaniyah. I found that to adopt such an approach without further explanation and expansion of reason constituted a material error of law. I gave directions for the further rehearing of this matter noting that the findings of fact were to stand but that the material error of law solely related to the judge's approach to the country guidance authority of AA and to the current Home Office policy and as to the ability for the Appellant to be returned to the IKR.
11. It was on that basis that the appeal returns before me for further consideration. It is, as I directed, to be addressed by way of submission only. Continuity is maintained by the legal representatives who appeared before me on the error of law hearing remained the same, namely Mr Pratt of Counsel for the Appellant and Mr Bates for the Secretary of State. In accordance with my directions I am provided with a further bundle of documents from the Appellant's representatives including a skeleton argument. I have given due consideration to all of these documents. There are no further documents provided by the Secretary of State.

Submission/Discussion

12. Mr Pratt reminds me that the sole issue extant in this matter is whether or not it is possible for the Appellant to travel from Baghdad to the IKR. He reminds me that the Appellant is ethnically Kurdish and fears discrimination and ill-treatment in central Iraq on the grounds of his being a member of an ethnic minority. He points out that the Appellant holds no Iraqi passport and no Iraqi national ID card and that he would therefore be unable to access benefits and services in Baghdad as set out in the headnote to *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)*. He reminds me that the Appellant is a Sunni Muslim and that country information shows ongoing and severe violence within Baghdad including, but not limited to, bombings which are causing hundreds of casualties each month. He further points out that the country information reflects that violent abuses against Sunni Muslims are carried out by Shia militias.
13. He points out that for the Appellant to return to the IKR it would be necessary for him to pass through areas known as the Baghdad Belts and that the country information indicates that they are still sufficiently dangerous to engage Article 15(c). He submits that any journey will involve transit through these areas, that it would not be possible for him to travel either by land or by air because he does not possess a ID card and

that in order for him to obtain such a card it would be necessary for him to go to Kirkuk in the IKR and apply for one.

14. He reminds me that it is not possible for the Appellant to ask a proxy to obtain a card and therefore it is impossible for him to access the necessary documents. The logistic outcome is, he consequently submits, that it is impossible for the Appellant to travel. The only place therefore he submits he would be able to go to is Baghdad which he submits is unsafe for him and consequently his appeal must succeed.
15. Mr Bates responds by relying on the Notice of Refusal. He states I am not being invited to depart from country guidance. He refers me to the extract from the country policy and information note for Iraq dated June 2017, paragraph 3.1.2 which sets out in general the areas where at that time the Secretary of State considered return was possible to. He does not ask me to depart from country guidance and acknowledges that the position does constantly change. He accepts that there are no forced returns at present to Baghdad but submits if he were returned it would be possible for the Appellant to board an internal flight. He states the position is unclear as to whether the Appellant would need a CSID in order to facilitate onward transit. He further considers that he would have family support and that there is nothing unreasonable about asking the Appellant to transit to Sulaymaniyah and that that would avoid the onerous overland route. He reminds me that the resettlement packages on offer include aid for onward travel and that he considers that that would be sufficient in this instance and that the Appellant would be able to find work and re-establish himself in IKR.
16. He submits that having arrived in the IKR it would be highly unlikely that the Appellant would be asked to leave as he has family there and he has previously worked for the Kurdish region security forces. He submits there is no reason why the Appellant could not get documents to live in the IKR and he asked me to find that realistically it is practical and possible for him to travel there.
17. In brief final submission Mr Pratt points out that it would not be possible for the Appellant to travel without documents although he does acknowledge that travelling by air would be safer than by travelling on land.

Findings

18. The Home Office policy document states that in general a Kurd or a person who originates from the IKR can relocate to or within the IKR and that it is for decision makers to assess each case by its merits. It has been emphasised to me that the issue turns on whether the Appellant can actually reach the IKR. Part of the problem that judge's experience at the present time in this jurisprudence is the continuing variation of the safety of accessing routes. The position however is relatively clear. Technically the Appellant could be returned to Baghdad. There are flights to Baghdad and there is a package available for onward transition to other areas.

19. I accept that the objective evidence shows that there is considerable violence likely to be perpetrated within the Baghdad Belts and that it would not be practical at the present time for the Appellant to try and make his journey to the IKR by road. However, I agree with the submissions made by Mr Bates that as a matter of principle there is no reason why the Appellant could not travel by plane to Sulaymaniyah and that when he arrives there, bearing in mind his family connection and his previous employment connection, that he would be able to live there.
20. I note the contentions made in his skeleton argument by Mr Pratt that the Appellant speaks only limited Arabic and that he has no family or other means of support or sponsorship within the Baghdad area or indeed any part of southern Iraq. It would seem that the suggestion made that the Appellant is financially destitute is not sustainable.
21. I consequently reach the conclusion that it has not been shown to me that it is not reasonable, nor practical, for the Appellant to be returned to the IKR by way of air transport from Baghdad onward to Sulaymaniyah and that having arrived there that he would not be in a position to sustain himself through family and employment. In fact the evidence provided shows just the contrary in the event that he finally gets there. In such circumstances the Appellant's appeal fails and I uphold the position as formally found by the Secretary of State in his Notice of Refusal. There is however one factor to bear in mind in all this in that I am advised by Mr Bates that at present there are no forced returns to Iraq and consequently the likelihood of the Secretary of State enforcing the decision is not in the present climate likely to happen. That however is a practical factor and not a consideration that I reach as a matter of law as to whether or not the Appellant's appeal fails.

Notice of Decision

The Appellant's appeal is dismissed and the original decision of the Secretary of State to refuse the Appellant's application for protection is upheld.

The Appellant was previously granted anonymity in these proceedings. No application is made to vary that decision and that decision is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17 October 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 17 October 2017

Deputy Upper Tribunal Judge D N Harris