



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

Appeal Number: PA/05967/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th April 2017**

**Decision & Reasons Promulgated
On 10th May 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**B.B.
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pratt of WTB Solicitors.

For the Respondent: Mr. McVeety, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a Kurdish national of Iraq, born in July 1997. He lived in a village near Kirkuk.
2. He made a claim for protection saying that he is at risk on return. He indicated he had limited education and sold gas canisters and did some farming. Whilst delivering gas canisters he met a girl from

Erbil called S. A sexual relationship quickly developed and she became pregnant.

3. Her family were involved with the KDP. Her family found out they came to his place of work, and took him away to their home where they tortured him. Five days later S was able to arrange his escape. Two days later he phoned S's cousin who advised him that her family had killed her.
4. He returned to his home village where he remained until the middle of 2015 when Daesh attacked his village killing his mother and his extended family. He was 15 minutes away caring for animals. His brother approached him and told him what had happened and he stayed in a place called Telward for two months. He then left his home country. He is afraid of the S's family and of Daesh. He claimed to have no documentation or support from home.
5. The respondent accepted he was a Kurdish Iraqi and had demonstrated awareness of Kirkuk. The respondent believed the appellant had attempted to mislead regarding his date of birth. He claimed when he arrived in United Kingdom he was a minor having been born in 1998. However, the respondent concluded he was a year older, which the appellant then accepted.
6. His claimed relationship with S was not accepted and inconsistencies in his account was referred to. No information about her family's involvement with the KDP could be found although the appellant had claimed they had a high profile. The KDP maintain a website of leaders of the party and he could not be found. It was not considered credible that S could arrange his escape. He had not claimed any further difficulties from her family after returning to his home village. The respondent took the view that even if the claim had some truth then the appellant can avoid difficulties by relocating.
7. Regarding Daesh, his account was considered to be vague and inconsistent. Country information was not consistent with his claim of an attack by them in May/ July 2015. Furthermore, the appellant said he lived in another village for two months without difficulty. The country guidance case of AA (Article 15 (c)) Iraq [2015] UKUT 544 referred to the contested areas as including cookbook. However the degree of armed conflict elsewhere did not reach the article 15 C threshold. It was suggested the appellant could live in Baghdad city or other parts of the country.

The First Tier Tribunal

8. The appellant's appeal was heard by First-tier Judge Herwald and was dismissed. The judge also considered the appellant's age which

had been disputed and concluded he had sought to mislead, suggesting he was a year younger. The judge also referred to inconsistencies in his account about his sexual liaison or that her family were looking for him.

9. The judge also found his account about Daesh lacked credibility particularly as he could not recall the date his mother and extended family were killed.
10. Finally, the appellant's credibility was damaged by his failure to claim en route.
11. The judge referred to background information submitted about Kirkuk suggesting there had been a change for the better in the level of conflict since the country guidance decision. The judge concluded that whilst there were still difficulties the level of violence was not such as to engage article 15 (c). Consequently, the judge felt able to depart from the country guidance decision and to conclude Kirkuk was no longer a contested area.
12. The judge found at paragraph 20 that Kirkuk was no longer a contested area and therefore the appellant could return air via Baghdad. He also had the option of going to the IKR where it was believed he should be able to find work.

The Upper Tribunal

13. Permission to appeal was granted on the basis of what was said in paragraph 20 of the decision. It was arguable the judge was wrong in finding appellant could return to Kirkuk via Baghdad. The judge had also not explained how he could travel to the IKR. It was arguable that the judge had not made a fact sensitive assessment in relation to the appellant.
14. The appeal was opposed in a rule 24 statement. The judge found the appellant lacked credibility. Consequently, the appellant had failed to establish he could not obtain the relevant documentation for return and had failed to show he would not receive family assistance.
15. At hearing I was given the country guidance decision of BA (Returns to Baghdad) Iraq CG [2017] UKUT 18. I was also given the respondent's August 2016 Country Information and Guidance on Iraq and the contested areas. The country guidance found that the current evidence did not justify departing from the conclusion of the tribunal in AA (article 15 (c)) Iraq CG [2015] UKUT 544 which considered the situation as at May 2015 and focused on the narrower issue of humanitarian protection under article 15 (c) of the Qualification Directive. That decision referred to the contested

areas as including Kirkuk whereby any civilian, solely on account of being present, faced a real risk of being subject to indiscriminate violence within the scope of article 15 (c). However, the degree of conflict in Baghdad was not such as to engage article 15 (c). Having said that, a decision maker should assess the individual where the general level violence is not very high, if they are able to show specific reasons over and above that of ordinary civilians.

16. The respondent's country information is dated August 2016 and at 2.3 .14 found that Kirkuk no longer met the special for article 15 (c). It referred to Daesh experiencing significant losses where the government controlling most of Kirkuk.

17. At hearing Mr Pratt acknowledge the negative credibility findings made and did not seek to challenge these. However the focus was upon the realities of removal. He submitted it would be too harsh to expect the appellant to go to Baghdad and no explanation was given as to how the appellant could travel from Baghdad. He submitted that the judge failed to make a fact sensitive assessment.

18. In response, Mr.McVeety pointed out that the burden of proof was upon the appellant. He said that the judge had destroyed the appellant's credibility. The judge rejected the claim the appellant would be at risk in Kirkuk. He referred me to changes within the country and for instance Mosel is no longer under ISIS. At paragraph 19 of the judgement the judge did not accept he was unable to contact his family as he claimed. The judge was not say necessarily had to stay in Baghdad but could use this as an entry point. With regard to how he gets from Baghdad to cookbook presenting officer pointed out the burden of proof was upon the appellant to show we could not get there. Cookbook is no longer a contested area. An alternative was the IKR and again, the onus was upon the appellant to show there were no planes or other means of travel. The information about the IKR indicated that they did not remove Kurds.

Consideration

19. It was open to the judge, based upon new information about Iraq, to conclude that the level of violence in Kirkuk had reduced.

20. The appellant's representative has contended it would be difficult for him to return to his home area via Baghdad or alternatively to the IKR.

21. It is for the appellant to establish the facts on which any claim to protection depends including difficulty in obtaining

documentation or travel. In terms of AA and as a matter of principle there is no obligation on the respondent to demonstrate the mechanism of returning an individual. It was for the appellant to do this. When he claimed he could not get documentation the judge rejected this. In any event, there would be no requirement for preclearance from the authorities of the IKR.

22. It is worth noting the judge found generally that he was not a credible witness. This obviously impacts upon his claim that he has no documentation; family support; or that he would face any particular risk.
23. It was for the appellant to make out the case there was something about his situation which would he would be particularly at risk. The appellant is a Sunni Muslim and Shia's control the government of Iraq and are the dominant religious group in Baghdad city. However, there is a significant Sunni minority living in Baghdad and there is no evidence of persistent or widespread attacks upon them. No other risk factors were put forward.
24. Having considered the decision in the round I find no material error of law established.

Decision.

The decision of First-tier Judge Herwald dismissing the appellant's appeal shall stand. No material error of law has been established.

Deputy Judge Farrelly

6th May 2017